NOMINATION—FEDERAL TRADE COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

NOMINATION OF
FLETCHER KEITH ADKINSON, TO BE A MEMBER OF THE FEDERAL TRADE COMMISSION

NOVEMBER 19, 1981

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NOMINATION—FEDERAL TRADE COMMISSION

THURSDAY, NOVEMBER 19, 1981

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 10:19 a.m. in room 235 of the Russell Senate Office Building, Hon. Bob Kasten, presiding.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Good morning. The committee will come to order. This morning, the Committee on Commerce, Science, and Transportation is pleased to convene a hearing on the nomination of F. Keith Adkinson to become a member of the Federal Trade Commission. Mr. Adkinson has been nominated to fill the remaining term of Robert Pitofsky, which will expire on September 25, 1982.

Mr. Adkinson received his undergraduate degree in 1966 and his law degree in 1969, both from the University of Virginia. Upon his graduation from law school, Mr. Adkinson joined a California law firm where his practice included corporate securities work, general corporate representation in acquisitions, mergers, and divestitures. He then joined the staff of the Senate Permanent Subcommittee on Investigations where for over 5 years as assistant counsel, he was responsible for managing the investigations relating to various aspects of crime, fraud, inefficiency, and malfeasance and corruption in Government.

Mr. Adkinson then returned to private practice in Washington, D.C., where his specialty has been general corporate and labor law. Mr. Adkinson's nomination comes at an important time for the FTC. Under the leadership of the new chairman, Jim Miller, this important agency is beginning to redirect its efforts toward activities that will produce a greater benefit for the consumer at a lesser cost.

The Commission is working to eliminate needless regulation and to inject balance into antitrust enforcement. I believe Mr. Adkinson's broad experience both in the private sector and Government will be extremely valuable to the Commission as it confronts the difficult issues it faces.

I look forward to working with you, Mr. Adkinson, in the years ahead in assuring a more balanced and effective Federal Trade Commission.

It is my understanding that a number of Senators may have opening statements and that there may be a number of questions for Mr. Adkinson. It would be my intention to first call on the Senators who are here to see if they have a brief opening statement. I will then ask Mr. Adkinson to make a brief prepared statement to the full committee and then, abiding by the general 5-minute rule which the committee has worked with in the past, we will go through questions from Senators.

It would also be my intention to go through one or more rounds of questions based on the 5-minute procedure, if that is the desire of the Senators.

[The biographical sketch and prehearing questions and answers follow:]

BIOGRAPHICAL SKETCH OF FLETCHER KEITH ADKINSON

Address: The Terrace, Harpers Ferry, W. Va. 25425.
Mailing Address: 1111 19th Street NW., Fifth Floor, Washington, D.C. 20036.
Date and Place of Birth: May 26, 1944, Brooklyn, N.Y.
Marital Status: Married to Frederica Brawley Adkinson.
Names and Ages of Children: Frederic Keith Adkinson, Age 3.

EDUCATION

1962-66—University of Virginia, Charlottesville, Va., B.A. degree awarded in 1966 (English major).

1966-69—University of Virginia, Charlottesville, Va., J.D. degree awarded in 1969.

EMPLOYMENT RECORD

September 1979 to present: Of Counsel, Seyfarth, Shaw, Fairweather and Geraldson, Washington, D.C.

March 1974 to August 1979: Counsel, Senate Permanent Subcommittee on Investigations, Washington, D.C.

August 1971 to January 1974: Associate, Wyman, Bautzer, Rothman & Kuchel, Washington, D.C.

June 1969 to August 1971: Associate, Wyman, Bautzer, Rothman & Kuchel, Beverly Hills, Calif.

GOVERNMENT EXPERIENCE

March 1974 to August 1979: Counsel, Senate Permanent Subcommittee on Investigations, Washington, D.C.

1976 to 1979: Town Attorney, Harpers Ferry, W. Va. (nonsalaried position).

MEMBERSHIPS

Virginia State Bar Association, 1969 to present; District of Columbia Bar, 1969 to present; State Bar of California, 1970 to present; American Bar Association, 1970 to present; West Virginia State Bar Association, 1976 to present; U.S. Court of Appeals, Admitted 1972; and U.S. Supreme Court, Admitted 1973.

POLITICAL AFFILIATIONS AND ACTIVITIES

Registered Democrat since 1966.
Member, Young Democrats, University of Virginia, 1962-63.
Volunteer, Rosalind Wyman's campaign for Los Angeles County Supervisor, 1970.
Member, Young Democrats, Fairfax, Va., 1972-74.
Member, Fairfax County Democratic Committee, 1972.
Delegate to Virginia State Democratic Convention, 1972.
Appointed by Bob Strauss, Chairman of Democratic National Convention, to Legal Review Board; drafted guidelines for 1972 Mini-Convention, 1972.
Democratic nominee, Virginia General Assembly, 19th District, 1973.
Member, Coalition for Democratic Majority, Washington, D.C., 1973.
Secretary, Democratic Discussion Club of Virginia, Fairfax, Va., 1974.
Volunteer, Presidential campaign of Senator Henry M. Jackson, 1975.
National Director, Democrats for Reagan-Bush, 1980.
Member of the Justice Department Transition Team, 1980.
Modest financial contributions over the past decade to Democratic candidates for federal and state offices (not exceeding $100 in any one year).

HONORS AND AWARDS

Various academic honors and distinctions.

PUBLISHED WRITINGS

Editor, "State Constitutional Revision," 20 Virginia Law Weekly Dicta Compilation 1969.

Testimony, given on numerous occasions before the Senate Permanent Subcommittee on Investigations in my capacity as Counsel to the Subcommittee, in connection with matters under investigation by the Subcommittee, appears in the Subcommittee's printed hearing records. Matters testified on would include, but not necessarily be limited to, organized crime; illicit traffic in weapons and drugs across the U.S.-Mexican border; the federal drug enforcement effort by DEA and Customs; corruption and mismanagement within the Bureau of Prisons; congressional impact on federal law enforcement capabilities; inefficiency, malfeasance and corruption in various branches of government. 1974-1979

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. What do you perceive to be the major shortcomings, if any, of the Federal Trade Commission today? Please be specific.

Answer. The perception of the Federal Trade Commission (FTC) as an unpredictable and adversarial entity controlled by its staff is in my opinion, its major shortcoming. That such is the perception may be a manifestation of inconsistent past actions by the Commission, an ineffectual congressional relations office and the perception of a "closed door" policy toward the subjects of FTC investigative attention.

While I necessarily speak as an "outsider," many students of the FTC feel, and I agree, that the Commissioners have failed to assert their control over the evolution of investigatons in a timely fashion. It is essential that the Commission reestablish its credibility by developing a consistent and rational approach to its enforcement actions.

Question 2. What steps do you believe can be taken to remedy these shortcomings?

Answer. The FTC needs to redefine its mission statement so as to "get back to basics." In the antitrust area the focus should be upon situations where there is restricted output/higher prices and barriers to entry into a given market. In the consumer area the Commission should focus upon situations where market failures significantly affect the consumer.

The Commission needs to give careful thought to where its resources (which will be considerably more limited than has been the case in the past) in both the antitrust and consumer protection areas are spent. It needs to focus its attention on issues which are truly in the public interest and bring cases which can be won.

It needs to send succinct and easily understood messages to all interested parties that it is under new management, that the rhetoric is being lowered, that a closed door, adversarial posture is a thing of the past and, of key importance, its investigations are under the careful direction of its Commissioners and Chairman. As every prosecutor should exercise self-restraint, careful analysis and purdence, so should the staff and commissioners at the FTC.

Question 3. What areas of present FTC activity do you believe should be given the highest priority? Please specify the reasons for your choice.

Answer. While I do not as yet have a comprehensive program in mind, if confirmed I will carefully examine pending investigative, enforcement and rulemaking initiatives with a view to identifying those which, in my opinion, need to be terminated, redirected, or given priority status as currently underway.

Having said that I have no specific program in mind, certain general observations might be in order. I think serious consideration should be given to a comprehensive review of the Commission's ongoing activities to evaluate the merits of continuing such activities. In that regard, I would like to take this opportunity to commend the actions taken by which the Congress in passing the Regulatory Flexibility Act which mandates the solicitation by Federal agencies of public comment with respect to rules which should be reviewed, modified, etc. It is my understanding that the Commission has already begun this process, which I view as an important element in the kind of review I am suggesting. If conformed, I would anticipate being an active participant in the process which has been undertaken at Congress' direction. I would also strongly urge that the Commission take similar initiatives in other areas as well.

The FTC should evaluate its future activities in the context of its basic mission statement—promoting competition and fostering consumer welfare. Included necessarily in such an evaluation is a definition of when it is appropriate for government to intervene.

Among the high priority items not necessarily associated with particular subject areas are improved relations with Congress, a lowering of the rhetoric, a lessening of the perception of an adversarial climate, and increased control of staff activities.

Question 4. Are there particular FTC activites that you believe should be redirected or discontinued? Please specify.

Answer. The FTC, until 1973, exercised enforcement and administrative authority under some 11 separate acts; since then that number has more than doubled to 27. As the FTC's authority increased under these new statutes, so did the Commission's creativity in its approaches to exercising that authority. Without prejudging any particular activity, which I believe it would be inappropriate to do as many may still involve active investigations or cases under adjudication, many of the initiatives taken by the Commission have been controversial; worse still, many have not achieved the desired result. Still other statutory directives have fallen into disuse.

It would seem appropriate and desirable to identify ineffective approaches and, without regard to the good intentions of their creators, abandon them.

On a related point, part of the Federal Trade Commission's mission statement is to advise Congress; in that capacity it should share with Congress its assessment of the effectiveness of the scores of statutes it enforces.

One specific area of FTC activity which has provoked intense criticism is its industry-wide rulemaking. While I believe there may be merit to the rulemaking approach, the method by which it is accomplished, on its face, leaves much to be desired. More careful consideration would seem in order before a proposed rule is published and, in fact, before the first internal draft is generated. It would seem that more careful development of balanced information related to the need for rulemaking is essential and a careful examination of the methods by which this might be accomplished would seem to be in order.

I understand that some years ago the Commission itself held informal hearings on practices within particular industries for the sole purpose of enabling the Commissioners to be better informed in their approach to dealing with industry problems and practices. Returning to such an approach, or something similar, might be worthy of consideration by the Commission.

Question 5. Are there any areas in which you think the Federal Trade Commission Act should be amended in orděr to enhance the FTC's ability to enforce its mandate? If so, what are these areas and what changes do you recommend? Are there any areas that should be cut back, transferred, or redefined?

Answer. In my opinion the FTC has all of the legislative authority it needs to fulfill its mission statement. In fact, as set forth in my answers to Questions 3 and 4, I believe a thorough analysis of the effectiveness of the many statutes enforced by the FTC should be untertaken and the findings reported to Congress. I would not hesitate to recommend to Congress that the basic statutes be amended to be more specific or to redefine the statutory mandate.

Question 6. Critics of the Federal Trade Commission have sometimes asserted that there is no demonstrable need for two antitrust agencies, and that the Bureau of Competition and Federal Trade Commission should be merged with the Justice Department. How do you justify the continuing existence of the two antitrust agencies? If you should believe that the two antitrust agencies should exist, what is your recommndation as to how the Department of Justice and the Federal Trade Commission should operate in order to maximize antitrust enforcement?

Answer. I recognize a need to streamline the workings of the federal government and to avoid unnecessary duplication. I further recognize the legitimacy of the question of whether the FTC should get out of the antitrust area. In this context, it may well be worthwhile to examine whether the FTC is doing its job in the antitrust area and, of more fundamental concern, whether it can do the job.

However, I believe that strong traditional antitrust law enforcement is indispensable to insuring a competitive economy if deregualtion is to succeed. The important differences between the FTC and Justice make the FTC, with its substantial economic staff and mission, uniquely suited to provide businesses with specific guidance while helping insure that federal courts do not thwart congressional intent. It is whether the FTC has been or can be effective in the antitrust area that is the subject of legitimate debate.

I question whether criticism of the actual "duplication" of activities between the Department of Justice and the FTC may not be based more on theory than fact. Since we are dealing with what should be a major factor in the economy, it is my belief that Congress and the executive branch should defer precipitous action at least until the FTC has had an opportunity, under new leadership, to put its own house in order and to chart a course perhaps more consistent with the premises upon which it was originally based.

Moreover, prudent judgement would seem to mandate a careful evaluation of the direct and indirect consequences of the long-overdue regulatory reform initiatives prior to entertaining seriously any major surgery upon the FTC.

With regard to a coordination of activity between the Department of Justice and the FTC, it is my understanding that the liaison between the two has worked well over the years. Because of the critical significance of such a working relationship, I would expect to evaluate what improvements, if any, are required.

Question 7. Do you believe that a more competitive market structure is always beneficial to the consumer? If not, would you please provide the Committee with specific examples of industries in which oligopolistic or monopolistic structure, due to economies in scale or for other reasons, have provided benefits to the consumer in terms of price and increased quality that should allow such structure to continue without antitrust action from the Federal Trade Commission or the Justice Department?

Answer. Antitrust law, over the years, has been built upon the foundation of promoting competition—the underlying premise being that a more competitive market struucture is always beneficial to the consumer. There is no question that consumers benefit from competition when, as a result of competition, consumers are provided with the best products and the highest number of options at the lowest possible prices. I do not have data to provide the Committee with specific examples of exceptions to the premise, nor do I think it would necessarily be appropriate to do so. I would want to evaluate the many variables in a specific industry before stating that there is insufficient competition within that industry.

Question 8. What are your views in regard to the Robinson-Patman Act? Do you believe Robinson-Patman enforcement could be made more effective or should it be repealed or amended? If so, please explain.

Answer. The Robinson-Patman Act is the law and should be enforced. However, the Congress might do well to reexamine the Act to determine whether it is serving the purposes for which it was originally intended.

Robinson-Patman was enacted by the Congress in 1936, during the depression, out of concern for the survival of efficient small businesses. No one can argue against the premise that efficent small businessmen need every assurance of fair play in the marketplace.

Times have changed, however, and many of the problems facing small businesses have changed with the times. In light of these changes, one question that must be answered is whether Robinson-Patman provides the best possible assurance that small businesses have the same opportunity for survival and success in the marketplace.

One might look, for example, at how capital markets might be improved for small businesses.

I would invite the Congress to review Robinson-Patman in light of its benefits to small businesses and would encourage the Congress to solicit the views not only of the FTC, but of the small businesses the Act was designed to protect.

In the meantime, I would reiterate that so long as Robinson-Patman is the law, I believe it must be enforced by the Federal Trade Commission. The congressional mandate can best be served and efficient small businesses protected by a Commission which is alert to factual situations where price discrimination is likely to lead to injury to competition.

Question 9. Do you believe the Magnuson-Moss Act has been effective in improving warranty protection to the public? Do you have any recommendations as to how this law might be made more effective?

Answer. Certainly I believe that consumers are entitled to fair and nondeceptive warranty protection, where business elects to provide warranties. However, a number of disturbing questions have been raised regarding Magnuson-Moss to which there appear to be no solid answers to date.

Some have questioned, for example, whether the Act, by requiring a choice between a full or a limited warranty, may have had the indirect consequence of actually reducing warranty protection to the detriment of the consumer.

Another aspect of the Act to which attention has been invited is whether a significant number of consumers are taking advantage of presale warranty availability.

I hestitate to address the effectiveness of the Magnuson-Moss Act or how it might be improved until I am at the Commission and have had an opprtunity to evaluate it.

Question 10. What do you believe is the role the Federal Trade Commission should play in insuring that product information is available to the consumer at the point of sale and in advertising?

Answer. Before determining the role of the FTC, it would seem appropriate to ask what role the market should play in product information dissemination. A competitive market should insure adequate information availability to the consumer. If there is market rivalry then information should be readily available and there should be no need for government intervention. If there are blocks to competition with the consequence that information is not forthcoming, then interim FTC mandated disclosure may be in order until competition can be restored. The Commission must necessarily be sensitive to the costs of information dissemination and should therefore satisfy itself that the proposed remedy will, in fact, improve market performance.

As an aside, I am aware of subsantial industry perception that the "reasonable basis" test requires reports concerning what might best be termed truisms. If confirmed, I would expect to evaluate the validity of the criticisms.

Question 11. Do you believe the FTC's program in the area of advertising substantiation has been effective? What changes, if any, do you believe should be made in such a program? Do you believe that the FTC could provide information collected in the advertising substantiation program to consumers in a more effective manner? If so, how?

Answer. Ad substantiation conceptually has significant value in checking product claims. However, one must bear in mind that the purpose of the program was to prevent consumers from being deceived.

Many have characterized the program as a failure, claiming that in many instances all that is accomplished is the compilation of voluminous reports which are of questionable benefit to the consumer and costly to the advertiser. These criticisms, and those raised concerning the scope of the "reasonable basis" test referenced in my response to Question 10, suggest to me that the ad substantiation program should be subjected to close scrutiny in terms of its actual benefits to consumers as compared with the cost to advertisers (which are often then passed on to the consumer).

Question 12. Do you have any views as to how corrective advertising might be used more effectively in cases where false and misleading advertisements have been presented to the public?

Answer. Corrective advertising is a valuable but extreme remedy which should be used sparingly, under circumstances where there are material frauds and deceptions and, even then, only when it can be demonstrated that a significant number of consumers are at that time aware of the information which is fraudulent and deceptive.

Any meaningful specific suggestions on improving the effectiveness of this program can only be developed after I have had a opportunity to evaluate Commission activity in this area.

Question 13. How do you intend to avoid improper ex parte communications?

Answer. As mentioned in one of my earlier responses, I believe that much of the hostile rhetoric directed at the FTC in the recent past is at least in part attributable to the widespread perception of its closed door and adversarial posture. The FTC has an enforcement mandate and it has its rules concerning ex parte communications. If confirmed, I intend to abide by the letter and spirit of the rules concerning such contacts. However, I feel that its effectiveness in discharging its enforcement mandate will be enhanced if the interested parties feel they have a meaningful line of communication with the Commission and I will make every effort to ensure such a line of communication, consistent with the appropriate rules.

Question 14. What do you think are the effects of the Commission implementation of the FTC Improvements Act of 1980?

Answer. While it is too early to evaluate the effects of the Act, particularly with regard to the internal procedural reforms, it unquestionably caused the FTC to stop certain ill-advised actions and to reconsider the basis of other actions. I particularly applaud the rules on confidentiality and the requirement for oversight hearings every six months.

Question 15. What is your view as to how the Commission has used its authority under the "unfairness" doctrine with respect to unfair or deceptive acts or practices and unfair methods of competition?

Answer. Much of the statutory language enforced and administered by the FTC is broad and vague, affording a generality and adaptability that could serve the Commission, the Congress and the marketplace well. However, this flexibility carries with it a power that must not be abused. In my opinion, the flexibility provided by Congress should be used to achieve the basic aims of its architects.

Recently the Commission has been criticized for using the vaguer, less specific concept of "unfairness" (as opposed to "deceptive") as the basis for enforcement activity. Because of the vagueness of the concept of "unfairness" and the uncertainty its recent use by FTC has created among businesses and consumers, I applaud the Commission's efforts to specify more carefully the circumstances in which it will consider using its "unfairness" authority. I have not evaluated the specific observations set forth by the Commission. However, it is a process that should go forward, with Congress as an important participant.

Question 16. What areas of antitrust enforcement would you emphasize and which would you deemphasize? Why? In your answer please specifically address enforcement in the areas of conglomerate mergers, vertical mergers, vertical distribution restrictions, resale price maintenance, and predatory pricing.

Answer. I am committed to strong and vigorous enforcement of the nation's antitrust laws. Moreover, I believe that strong traditional antitrust law enforcement is indispensable to insuring a competitive economy especially in light of the long overdue deregulation efforts. However, to be effective the FTC must redefine its mission statement, if you will, so as to focus its limited resources upon enforcement actions which will increase rivalry, ensure market entry capability and enhance consumer welfare.

While the FTC is a collegial agency with the majority determining the kinds of cases to be pursued, I would deemphasize: (a) the exotic cases based upon novel and untested theories; (b) cases based upon vague or unformed theories; and (c) vertical distribution restriction cases where there is no clear showing of anticompetitive effect. Additionally, I would deemphasize pursuing horizontal mergers and acquisitions of little economic or competitive significance.

With specific regard to conglomerage mergers, I would base my comments upon the premise we are considering the conglomerate where the combination does not involve substantiasl actual or potential competition nor the creation of artificial barriers to entry. In these situations, there is little significant anticompetitive consequence to these transactions. Many may even be procompetitive.

The above notwithstanding, the FTC and the Department of Justice should be alert to any emerging wave of mergers among the Fortune 100, especially if such a wave seems to portend economic developments of significant concern.

Should such a wave of conglomerate acquisitions loom on the horizon then a less than vigilant merger policy could pose a serious threat to the free market.

While keeping a watchful eye on merging trends, the FTC should concentrate upon conglomerate merger activity impairing the competitive performance of direct competitors.

With regard to the matters upon which you request specific comment, many of these issues will be before the Commission in the near future. I therefore feel it would be most prudent to share with you only general observations which may be helpful to the Committee.

Concerning vertical mergers, many of the above observations pertain and attention should be focused upon mergers having anticompetitive consequences. If, as is sometimes the case, vertical mergers involve little more than changes in ownership, then no antitrust attention need be paid.

Elaborating upon my earlier observations concerning vertical distribution restrictions, the FTC would do well to adhere to the guidance provided by the Supreme Court in its 1977 GTE Sylvania case where it urged a careful look at the realities of the marketplace.

Regarding resale price maintenance, under current law such a practice is illegal. Whether it should continue to be illegal in all cases is the subject of active discussion in the antitrust community. I await the outcome of the reevaluative process.

Concerning predatory pricing, I agree that it is illegal when done by a monopolist. There is healthy debate as to what constitutes predatory pricing.

With all the above in mind, the thrust of your question really goes to program planning and, in that regard, the real test is impact on competition rather than abstract theory.

Question 17. Should the 1968 Department of Justice merger guidelines be revised? What should be the role of concentration ratios in the merger guidelines? What should be the role of the FTC in developing these revisions?

Answer. While I am not possessed of sufficient empirical evidence to comment with authority, it would seem that the 1968 guidelines are clearly too restrictive at the margins. I will therefore review with great interest the proposed revisions currently underway. It is my hope that the guidelines will focus upon market realities without a slavish adherence to market shares.

Concerning the proper role of the FTC in developing the guidelines, since the FTC and Justice both have jurisdiction over mergers, the FTC should be an equal partner in the process.

Question 18. How would you explain the recent surge in corporate mergers? Do you find this surge a cause for concern? What should be the response of the FTC?

Answer. While there are obviously many sound business reasons for one company to acquire or merge with another it is reasonable to presume that at least a portion of the current activity is directly or indirectly related to the perception by the business community of a coincidence of events making such mergers more attractive. With my more detailed observations in answer to Question 16 in mind, such merger activity is cause for concern and the FTC would do well to be vigilent for any resulting anticompetitive consequences.

Senator KASTEN. We have one additional witness today, Mr. Martin Steinberg, but evidently he is not here at this time. There was some question as to whether he would want to testify before the committee and possibly respond to questions.

But, we will wait and see how that works out later in the morning. First, Senator Cannon.

Senator CANNON. I have no opening statement, Mr. Chairman.

Senator KASTEN. Senator Packwood?

The CHAIRMAN. No opening statement.

Senator KASTEN. Senator Long?

Senator LONG. No statement.

Senator KASTEN. Mr. Adkinson, we are pleased to have you with us this morning and look forward to your prepared remarks.

STATEMENT OF FLETCHER KEITH ADKINSON

Mr. ADKINSON.[1] Thank you. Mr. Chairman and members of the committee, I am pleased to appear before you today to discuss my qualifications to serve as Commissioner on the Federal Trade Commission. Needless to say, I am deeply honored that the President has nominated me to this post and I am most appreciative of the committee's efforts to schedule this hearing in such a timely manner.

I have provided the committee with my responses to the prehearing questions which I understand were prepared jointly by the majority and the minority. I hope my observations have yielded some insight into my thinking concerning the issues which are of paramount importance to the members of the subcommittee and to members of the full committee.

With the committee's indulgence I would like to take a moment to make a few brief comments.

First, with respect to my professional qualifications, I would like to give the committee a thumbnail sketch of my experience. As you know, I am not an antitrust lawyer. On graduation from the University of Virginia Law School, I joined the Beverly Hills law firm of Wyman, Bautzer, Rothman & Kuchel. During the 4 years I was with the firm, working closely with Gene Wyman and former California Senator Tom Kuchel, my practice involved primarily corporate securities work and general corporate representation in major acquisitions, mergers and divestitures.

In 1974, I left the Wyman firm to join the staff of the Senate Permanent Subcommittee on Investigations where I served as assistant counsel for nearly 6 years. In that capacity I was responsible for developing and monitoring investigations in the areas of syndicated or organized crime; all aspects of crime or lawlessness within the United States fraud and inefficiency, malfeasance and corruption in all branches of Government.

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[1] See p. 33, Mr. Adkinson sworn in.

Because of the serious problems in this country which are attributable to the infiltration of organized crime into more and more legitimate business enterprises, and because of the interest of the members of the subcommittee in investigating these problems, I devoted a significant portion of my time with the subcommittee to the direction of such investigations.

I summarized some of these investigations in my prepared statement but will omit them from the oral remarks.

[The information referred to follows:]

Hearings in August of 1978 on organized crime activities including loan-sharking, narcotics trafficking, arson and contract murder in South Florida; narcotics trafficking and contract murder in federal prisons; corruption of prison officials and prison employees; and the infiltration and manipulation of the criminal justice system (e.g., via the Freedom of Information Act) by organized crime elements.

Hearings to examine the problems of illegal traffic in weapons, ammunition and explosives from the United States into Mexico and Central America.

An on going in-depth evaluation of federal narcotics enforcement efforts by DEA and Customs.

Hearings in September of 1978 on corruption, mismanagement, weapons and narcotics smuggling within the United States penitentiary in Atlanta.

Hearings in October of 1978 on the nature, scope and extent of organized crime activity in South Florida and the capability of federal, state and local law enforcement to combat it.

Additional investigations were conducted into the laundering of millions of dollars in narcotics proceeds through legitimate banking channels in South Florida and an examination of inadequacies of present banking regulations; and the "chilling" effect on law enforcement capabilities resulting from the Freedom of Information Act, Privacy Act, Tax Reform Act of 1976, Bank Secrecy Act and other legislation.

In August 1979 I left the subcommittee to accept a position as of counsel with the law firm of Seyfarth, Shaw, Fairweather & Geraldson here in Washington to develop and manage a legislative/regulatory practice for the firm.

While all of this may seem far afield from the kinds of experience one commonly associates with an FTC Commissioner, I believe my varied experience qualifies me, perhaps uniquely, for service on the Commission.

My experience in the practice of corporate and corporate securities law gave me an appreciation not only of what is right, but of what is often wrong, with the corporate perspective, which I believe will be relevant in dealings with many of the legal areas in which the FTC is particularly active and in areas in which it should be more active.

As counsel to the Senate Permanent Subcommittee on Investigations, I developed valuable insight into the difficulties attendant to conducting politically sensitive and sophisticated investigations, including subpena control and guidance of investigative staff. While the staff under my direct control was small, the high profile of the activities undertaken intensified the learning experience. I believe these experiences uniquely equip me to provide meaningful direction to the FTC staff investigators and to evaluate in the early stages of the investigative process the merits of continuing or altering a particular course of action.

Equally important, I believe my years on the subcommittee give me a thorough understanding of the legislative and regulatory processes, and recognition of the critical need for meaningful and regular communication and accountability between independent Government agencies and the Congress.

My current employment has resulted in equally intense exposure to legislation and Government regulation though significantly different from that gained on the Hill. That exposure has brought with it better understanding with respect to the need for carefully drafted legislation, thoughtful oversight, and the need for careful evaluation and periodic reevaluation of what the Government's role should be in the regulation of private industry.

All in all, it is my belief that my varied professional experiences, although unrelated specifically to the Federal Trade Commission, will stand me in good stead and have prepared me to contribute in a positive way to revitalization and rehabilitation of what has in recent years been, with some cause, an agency "under siege" from the Congress, other Government agencies, and the public.

I have watched with great interest and some trepidation while the Commission's political capital, built up over many years, was dissipated to such an extent that even the continued existence of the Commission came into question.

I believe that much of this loss has been largely unnecessary and is the result of both poor tactics and a failure to correctly answer the most critical question any Government agency faces: When is it appropriate for the Federal Government to intervene and what is the appropriate nature of such intervention?

It is my strong belief that the Federal Trade Commission occupies a unique and extremely important position in the American economic system and my recognition of the increasing importance, during the next few years, of the Commission maintaining that unique position causes me to be particularly interested in the challenges and responsibilities of the office to which I have been nominated.

It is truly unfortunate that in recent years the general perception of the Federal Trade Commission has been as an unpredictable, adversarial entity controlled by its staff; that issues are often prejudged; and that the Commission has a closed mind, as well as a closed door policy toward the subjects of FTC investigative attention.

That such is the perception may be a manifestation of a number of factors, including inconsistent past actions by the Commission, too little attention being paid to congressional relations, and what has been described by many as an institutional arrogance, which, if true, is perhaps the result of the tremendous power granted the agency under the many statutes for which it has jurisdiction.

It is now not only appropriate, but necessary, for the Commission to shed its defensive mantle and take the initiative in developing and pursuing programs and enforcement initiatives clearly within its jurisdictional mandate which send clear and consistent signals to the business community, the Congress, and the public. Only then can we get the Commission back on track and make it the efficient and effective enforcement agency envisioned by this body.

If confirmed, I intend to devote my energies to this critical undertaking.

I would now like to address a few remarks to statements that have occurred over the past several days. Committee staff and some members of the committee have expressed concern to me and others over a contract I entered into in September 1978 to write a book while assistant counsel to the Senate Permanent Subcommittee on Investigations. I welcome a full, fair discussion of the book agreement and any related issues, some of which have been obscured by the public discussion of the book.

First, however, I would like to address what I consider to be the most important issue raised by committee staff. That is the question of my behavior as a staff member of the Senate Permanent Subcommittee on Investigations and whether that behavior could or should be viewed as violative of the ethics standards which apply. I have always held myself to very high standards professionally, ethically, and personally.

I believe that my associates in the private practice of law prior to joining the staff of the subcommittee and those with whom I have practiced since leaving employment in the subcommittee would agree that I have always adhered to the highest ethical and professional standards.

For the more than 5 years I served on the subcommittee staff, I always served the chairman and members of the subcommittee and served Senator Nunn personally in a manner beyond reproach. When questions regarding my professional activities were surfaced in 1979, I requested that all the allegations be immediately referred to the Department of Justice for investigation and disposition.

This was not only to protect my own good name and reputation but also to protect the integrity of the subcommittee and its members. In that regard, I would like to outline for the committee the events that transpired.

In August 1978, the subcommittee heard testimony in 5 days of public hearings from Gary Bowdach, an admitted arsonist, loan shark, and contract killer, who gave information about the organized crime.

His testimony was the culmination of several years of inquiry into the operations of organized crime and it ultimately led to hearings in September 1978 in Atlanta about corruption within the U.S. Penitentiary in Atlanta and additional hearings into organized crime activities in south Florida in October 1978.

Mr. Bowdach did not testify at these subsequent hearings. Following the conclusion of the subcommittee series of hearings on organized crime, in early November, I advised Senator Nunn that I wanted to return to private practice. I told him I felt that after my 5 plus years with the subcommittee, it was time for a change. Senator Nunn expressed his support for my efforts and offered to assist me in my search for employment in the private sector.

In late November or early December 1978, Gary Bowdach was released from prison by order of a Federal court in Miami. During the Christmas holidays, Mr. Bowdach approached me and we discussed writing a book about organized crime and the problems inherent in the criminal justice system.

Mr. Bowdach and I agreed that with his cooperation, I would write a book about his experiences within the criminal justice system. We also agreed that if a publisher was eventually found, the proceeds would be shared equally.

During the 1978 Christmas recess, I sat down and on the basis of the subcommittee's August public hearing record, attempted a preliminary draft of the introductory chapters of the proposed book. I never attempted to contact a publisher, nor did I retain an agent.

Mr. Bowdach and I reviewed together the chapters and we agreed the product was unsatisfactory and the project should be abandoned. Mr. Bowdach said he would look elsewhere to find someone to write his book. As far as I was concerned, the contract was voided and the project was terminated. In January and February, I intensified my search for employment in the private sector.

In February or March, I met with a representative of the firm of Seyfarth, Shaw, Fairweather & Geraldson. At that point, I focused my attention on the prospect of employment with the firm. On July 1, I was made a tentative offer. Subsequently, I was advised that the firm would meet to agree on my compensation package and a formal offer would be forthcoming on Monday, the 13th of August.

I accepted it on Monday, the 13th of August. On August 9, I had discussion with the chief counsel to the subcommittee regarding a series of allegations which had been made against me.

I advised the chief counsel at the meeting that Gary Bowdach and I had agreed for a brief time beginning in December of 1978 to write a book. After reading my draft of the first few chapters, we concluded that we would not go forward with the book.

At the same time, I advised the chief counsel that there was no truth to the other allegations which had been made and I requested that all of the charges be referred for investigation. On the chairman's return to the country a few days later, I got his personal assurance that all allegations had been referred and that the Department of Justice had been advised that I had initiated the request for referral.

Such referral was a standard procedure which had been implemented because the unique nature of the subcommittee and the nature of the responsibilities which had been delegated to staff.

Committee staff has questioned whether the book contract was a violation of subcommittee rules. I reviewed the rules at the time, Senators, before I entered into the agreement and concluded that I would not be violating the rules of the Senate. Because of the questions raised by committee staff, I have reflected further on that conclusion. But I would like to explain to the committee my thinking at the time.

Rule 45 of the standing rules of the subcommittee, which is now rule 37, provides that no employee shall engage in any outside or professional activity or employment for compensation unless he has reported in writing when such activity or employment commences, and on May 15 of each year, thereafter, so long as such activity or employment continues, the nature of such activity or employment to his supervisor.

I received no compensation for the book project with Mr. Bowdach, nor as I have indicated previously, were there any actions taken by me during the Christmas recess other than attempting to rough out a draft chapter or two based upon the public record of the hearings.

The committee staff informed me that its concern is my failure to report to my supervisor the fact that the contract to write the book was in existence, as well as the character of the person with whom I had entered the agreement.

With regard to the latter point, the other intent for the book was to deal with the ability of organized crime to beat the criminal justice system and manipulate it to its advantage, and to chronicle what happens to an individual who comes forward to cooperate with Federal law enforcement officials.

Mr. Bowdach's experiences as presented in the hearings made him an ideal and unique subject.

Mr. Chairman, with regard to the other concerns, I believed at the time that the rule was clear. I know that I acted in good faith.

In reviewing the rule at the time, I believed that clearly an identifiable source of compensation to be paid on a certain date or the actual receipt of compensation for services performed triggered the reporting requirement under rule 45.

I now understand that others construe this rule differently. On reflection, I believe that I may have failed to give sufficient consideration to one aspect I have not addressed, that is the interest in prevention and appearance of a conflict or the potential for a future conflict as a result of outside staff activities. This is an overriding concern having little if anything to do with compensation.

Mr. Chairman, let me be the first to say that I recognize the legitimacy of this concern and with hindsight, I would certainly not have entered into the agreement while still in the employ of the Senate without first discussing it with Senator Nunn.

While the project died aborning, the fact that these issues have been raised demonstrates to me that I was not fully appreciative of these factors when I entered into the agreement. I can assure you that I have learned from the episode and am considerably more sensitive to the concerns that have been raised.

Before concluding my statement, Mr. Chairman, there is one other issue I feel should be addressed. The allegations which I consider to be the most serious of all made against me in August of 1979 was that I had tampered with Gary Bowdach's testimony. I would like to state for the record that that is categorically untrue.

Thank you for this opportunity. I would be pleased to respond to any questions you may have.

Senator **Kasten**. Mr Adkinson, thank you very much. I note that Senators Danforth, Ford, and Inouye have arrived.

Senator Danforth, do you have an opening statement?

Senator **Danforth**. No.

Senator **Kasten**. Senator Ford?

Senator **Ford**. I have no statement.

Senator **Kasten**. Senator Inouye?

Senator **Inouye**. No.

Senator **Kasten**. Then, we will have questions in the order in which the Senators have arrived. The order in which Senators have arrived is Long, Kasten, Packwood, Cannon, Danforth, Ford, and Inouye.

We will proceed with 5 minutes per Senator and one or more rounds if that is the desire of the membership.

Senator Long?

Senator **LONG**. I would pass at this point, Mr. Chairman.

Senator **KASTEN**. Senator Packwood?

The **CHAIRMAN**. Did any of the actions that you took with Mr. Bowdach violate the rules of ethics that apply to employees?

Mr. **ADKINSON**. At the time, I didn't believe it did, and I still don't believe it did.

The **CHAIRMAN**. Who made the overtures as to the book contract?

Mr. **ADKINSON**. Mr. Bowdach approached me after he was released from prison.

The **CHAIRMAN**. This was after you had brought him down as a witness?

Mr. **ADKINSON**. Months after.

The **CHAIRMAN**. He had absolutely no contact with you while he was a witness?

Mr. **ADKINSON**. Absolutely not.

The **CHAIRMAN**. I have no other questions at the moment, Mr. Chairman.

Senator **KASTEN**. Senator Cannon?

Senator **CANNON**. Thank you, Mr. Chairman. When precisely was it you began your employment for the subcommittee?

Mr. **ADKINSON**. In March 1974, Senator.

Senator **CANNON**. And then you continued that employment until what date?

Mr. **ADKINSON**. August 1979.

Senator **CANNON**. That is the time you said you wanted to leave to seek other employment?

Mr. **ADKINSON**. That was some months after I notified Senator Nunn that I was leaving to seek other employment.

Senator **CANNON**. Now, did you organize a subcommittee investigation of organized crime in south Florida?

Mr. **ADKINSON**. I, and others, conducted hearings in south Florida on organized crime activities at the request of Senator Chiles.

Senator **CANNON**. When did you begin work on those hearings?

Mr. **ADKINSON**. We had the hearings with Gary Bowdach in August 1978, and immediately thereafter, went to Atlanta for a series of hearings on the Atlanta Penitentiary, and then to south Florida at Senator Chiles' request for hearings on organized crime there.

That took place in either late October or the first couple of days in November.

Senator **CANNON**. When was your first contact with Gary Bowdach?

Mr. **ADKINSON**. I can't pinpoint the date, but it would have probably been in March or April 1978, when the Department of Justice introduced Mr. Bowdach to the subcommittee.

Senator **CANNON**. That is how you first found out about Bowdach, from the Department of Justice?

Mr. **ADKINSON**. Yes.

Senator CANNON. And why did you select him, then, as a witness? Did you interview him on a number of occasions?

Mr. ADKINSON. The process was this, Senator: Senator Nunn was interested in having the subcommittee get back into, if you will, the organized crime investigating area that Senator McClellan had done some years earlier. He was interested in finding an individual witness, or series of witnesses, who could address a multiplicity of areas.

I went to the Department of Justice and the Department of Justice organized crime strike force in Florida said that they had such an individual whose credibility had been documented, an individual whom they had been using for some scores of prosecution successfully and an individual who had been polygraphed and with respect to whom others had testified.

As a result of that, we first met, we being myself and other subcommittee investigators, first met Mr. Bowdach in the presence of the strike force attorney in south Florida. Mr. Bowdach was in the witness protection program at the time.

Senator CANNON. When was that?

Mr. ADKINSON. Senator, I am guessing March or April.

Senator CANNON. Of 1978?

Mr. ADKINSON. Yes.

Senator CANNON. Now, how many times did you interview Bowdach before the hearings began?

Mr. ADKINSON. I can't say with specificity how many, but there were numerous interviews which were tape recorded and transcribed, on the basis of which we could make an evaluation and recommendation to our Senators as to whether they wanted to go forward with this witness.

We had to involve Senator Percy's staff at one stage in the investigation. We conducted others. These activities led to an executive session hearing on Mr. Bowdach wherein he appeared for some 8 or 10 hours, so that the Senators could evaluate on their own the merits of him as a witness.

Senator CANNON. And after that period of time, he was selected as a witness?

Mr. ADKINSON. Yes.

Senator CANNON. That hearing began when?

Mr. ADKINSON. The executive session hearing was in July—lasted one day. The public hearings, Senator, were on August 1, 2, 3, 9, and 10 in 1978.

Senator CANNON. And——

Mr. ADKINSON. He was the lead witness in 5 days of hearings.

Senator CANNON. When did Gary Bowdach first ask you to help him with the Parole Commission?

Mr. ADKINSON. With the Parole Commission?

Senator CANNON. Yes.

Mr. ADKINSON. This comes much later, sometime in the summer of 1979.

Senator CANNON. The summer of 1979?

Mr. ADKINSON. Yes.

Senator CANNON. Did he also ask you to help him in some judicial proceedings as well?

Mr. ADKINSON. He called upon the subcommittee and Senator Nunn to fulfill the representation and warranties that were made to him when he appeared in the public session. It was in the context of implementing the warranties and representations that the subcommittee was of assistance to him in mid to late summer of 1979.

Senator CANNON. What were those representations that were made to him?

Mr. ADKINSON. As a condition precedent to his appearance, Mr. Bowdach, wanted a contract with the marshal service because he was in the witness protection program, and it was a negotiated contract between Mr. Bowdach and the head of the witness protection service that called for the marshal service to undertake certain activities on his behalf.

In the summer of 1979, there were indications that the marshal service was not doing that. They weren't fulfilling that obligation. Senator Nunn and others had warranted to Mr. Bowdach that they would oversee the fulfillment of the contractual obligations of the marshal's service in executing their commitments to him in the witness program.

There were other representations made to Mr. Bowdach with regard to making his communications with the subcommittee known to anybody that he felt was deemed necessary.

Senator CANNON. My time has expired.

Senator KASTEN. I thank the Senator and wish to remind all the Senators that we will go through one or more rounds of questions, if that turns out to be the desire of the committee.

Senator Danforth?

Senator DANFORTH. Let me ask you this: It is my understanding around Christmas of 1978, Mr. Bowdach approached you about writing the book; is that correct?

Mr. ADKINSON. That is correct.

Senator DANFORTH. You did not approach him?

Mr. ADKINSON. That is correct.

Senator DANFORTH. That contact by him was made several months subsequent to his testimony before the committee?

Mr. ADKINSON. Yes; he testified in August. He was released from prison the end of November. He approached me personally in mid-December.

Senator DANFORTH. Was there any discussion among the committee staff or among the Senators of recalling him before the committee or making any further use of him?

Mr. ADKINSON. No, sir.

Senator DANFORTH. As far as you knew and as far as the committee knew, their dealings with Mr. Bowdach had been concluded?

Mr. ADKINSON. Yes, sir.

Senator DANFORTH. With respect to the contract, was it a written contract?

Mr. ADKINSON. Yes; it was.

Senator DANFORTH. Do you have a copy of the contract?

Mr. ADKINSON. No, I don't. I thought I did at the time that the allegations were made, but I do not. It was a simple page-and-a-half contract, really an agreement to cooperate. It called for no exchange of money and if we cooperated and we wrote a—it was an oral condition precedent to that contract that, I guess, my evaluation of, has prompted the attention.

It was also noted since I had given my notice, that I was leaving the subcommittee, that I wouldn't undertake any aspect of it until I had left the subcommittee because I wouldn't have the time, No. 1, but No. 2, I thought I was going to leave the subcommittee within weeks after entering the contract and I took a degree of affirmative action that caused us to abandon it early on.

Senator **Danforth**. I am not sure I am with you on that. Are you saying that around Christmas of 1978, you did some preliminary drafting, some sketching of a chapter? But you told Mr. Bowdach you could not actually write the book until you left the subcommttee?

Mr. **Adkinson**. He and I discussed that at the time the contract was entered into. I fully expected to be out of the subcommittee within a matter of weeks. Having said that to him, I unilaterally undertook to sit down and see if it was a viable project by drafting a chapter or two over that Christmas recess.

Senator **Danforth**. Did you discuss with Mr. Bowdach the possibility of helping him get a parole?

Mr. **Adkinson**. During these discussions, he was a free man and there was no reason to believe he had a parole problem.

Senator **Danforth**. He had been released from prison?

Mr. **Adkinson**. Yes.

Senator **Danforth**. Did you at any time work to get a parole for Mr. Bowdach because of your financial interest in him or for any other reason?

Mr. **Adkinson**. Not at any time, Senator. The need for a parole hearing in the context of fulfilling the obligations to the subcommittee became an issue shortly before I left. But that parole hearing was scheduled and took place, as far as I know, after I left.

Senator **Danforth**. What, if any, were his parole problems subsequent to his release from the penitentiary?

Mr. **Adkinson**. This is a little complicated. A Federal judge in Florida at the request of Senator Chiles and others gave him a rehearing on a legal technicality that involved whether the sentencing guidelines, which were passed after he was originally sentenced, were inconsistent or frustrated the intent or subverted the intent of the judge in the original sentencing. As I say, I think I have it confused.

In any event, he was released based upon the judge making a determination that involved the interface of the sentencing guidelines with his decision at the time.

When he was released, he was released as a free man with the time he had served. He was finished with the criminal justice system. The Department of Justice filed a notice of appeal of that decision 120 days later, I believe is the timeframe.

At the time the Department filed that appeal, there was concern as to whether that represented the inconsistencies that one might fear in their attitude toward Mr. Bowdach because he cooperated with the Department of Justice tenfold more times than with the subcommittee.

At his rehearing where he was released, the Department of Justice appeared on his behalf. But in any event, they filed a notice of appeal of a judge's order and inquiry was made to determine why that notice had been filed.

Were they reversing themselves and now intent on having Mr. Bowdach reincarcerated or not, which would have been a manifest inconsistency with past action. They advised the subcommittee, Senator Nunn, I believe, that that was not their intention.

They were preserving there appeal right. They had not made a decision as to whether to move forward with it.

Some months later, they did in fact move forward with it, which brought up the issue of, "Well, if you want to preserve precedent of avoiding this judge's decision, have appeal and hopefully win it," which I think they ultimately did, then what happens to Mr. Bowdach, whom you say you are really not out to put back in prison?

It was in that context that an effort was made with the cooperation of the Department of Justice as far as I recall to go the parole route to satisfy the particular situation he was confronted with.

Senator DANFORTH. All of this was subsequent to your entering into a contract with Mr. Bowdach?

Mr. ADKINSON. That's right.

Senator DANFORTH. And was not anticipated at the time of that contract?

Mr. ADKINSON. Absolutely not.

Senator DANFORTH. He did not ask you at the time of the contract to help him with the Justice Department or the parole board or the Federal courts or anybody else?

Mr. ADKINSON. No, sir, quite to the contrary. December 1978 and for the next several months, may have been the most tranquil time in Mr. Bowdach's life for the previous 20 years, because he perceived he had no problems.

Senator KASTEN. Senator Ford?

Senator FORD. It is very difficult for us nonlawyers to understand the legal language. With a former Attorney General here, help me just a little bit.

Mr. Bowdach was released and then returned to prison? Am I correct in that?

Mr. ADKINSON. To my knowledge, he was never returned to prison.

Senator FORD. The judge's ruling released him from prison?

Mr. ADKINSON. That's right.

Senator FORD. Then he was recharged? Am I correct in that assumption?

Mr. ADKINSON. No, Senator. If I may, he was released from prison by virtue of an order of a Federal court.

Senator FORD. Why did Federal court order his release?

Mr. ADKINSON. Based on an interpretation of the sentencing guidelines and the original decision of the judge in the case.

Senator FORD. Was that release on a technicality, then?

Mr. ADKINSON. The release was as a result—it wasn't a technicality. It became a major legal precedent. The release was based in large part upon the manifest indications of his cooperation.

Senator FORD. At what time was that when the judge ruled?

Mr. ADKINSON. My best guess is November of 1978, right before he was released from prison. As a result of that order, he came out.

Senator FORD. Then what happened to him after that period of time, as it related to his incarceration?

Mr. ADKINSON. My recollection is he never set foot back in prison because he was in the witness protection program and the general consensus of opinion was he would not have a long life span if he returned to prison.

So the focus of attention became in the minds of the Department of Justice in maintaining his status of freedom and at the same time preserving their appeal right in appealing the decision that the judge made.

Senator FORD. If he was made a free man on a technicality or the question of the ruling of the judge, then his conviction, was it ever upheld or overturned or what?

Mr. ADKINSON. No. My best recollection, Senator, is he was released with time served. Now, if the appeal was filed and if the Justice Department——

Senator FORD. You said a while ago that the appeal was filed.

Mr. ADKINSON. Yes, sir. If it was filed and the Justice Department won that appeal, then theoretically, Mr. Bowdach would go back to prison.

Senator FORD. The Justice Department did appeal?

Mr. ADKINSON. They filed a notice to appeal and some months later did in fact appeal, which caused great consternation to Mr. Bowdach, as you might imagine, because the worst case situation there would be returning him to prison.

Senator FORD. They lost the appeal or won it?

Mr. ADKINSON. I think the Government won the appeal.

Senator FORD. What happened to the witness?

Mr. ADKINSON. The witness maintained his posture in the witness protection program outside of prison, and was granted a parole.

Senator FORD. His conviction then was upheld by the appeal?

Mr. ADKINSON. That's possibly a way to say it, yes.

Senator FORD. Try layman's language on me.

Mr. ADKINSON. Nothing ever happened to the conviction. He was convicted of a number of things.

Senator FORD. He was convicted and released on a technicality. The Justice Department appealed. They won the appeal and he got a parole?

Mr. ADKINSON. Yes, sir. I think that would be accurate.

Senator FORD. Then all during that time, you were, or prior to that time, you were still under contract with him or you two had a contract from late 1978 until sometime in 1979?

Mr. ADKINSON. December of 1978 through January of 1979.

Senator FORD. If your writings had been acceptable, would you have continued to write the book?

Mr. ADKINSON. I probably would have, Senator, after I left the subcommittee.

Senator FORD. You were already writing. You had a preliminary chapter or two or three which was not acceptable?

Mr. ADKINSON. Yes.

Senator FORD. Who was it not acceptable to?

Mr. ADKINSON. It was mutually not acceptable.

Senator **Ford**. You said that your writings weren't very good, then?

Mr. **Adkinson**. I'm prepared to say that on the basis of that effort, I would not qualify as a novelist that would command an advance.

Senator **Ford**. You said that you left the committee. Were you asked to leave the committee or did you—did they give you an opportunity to leave voluntarily?

Because you went from December until some period of time much later than that, August 13, is the date that you gave in testimony a minute ago.

Mr. **Adkinson**. Yes, sir. The subcommittee staff, at the time that they confronted me with the allegations in a very hostile environment, while the chairman was unavailable and out of the country, I think it is absolutely fair to say that they wanted to suspend me on the spot.

The severity of the allegations were of great concern to me as well as the timing of the allegations because I had an offer in principle from my firm which was to be finalized on the following Monday.

So, the chief counsel and I entered into a dialog. In the meantime, he talked to Senator Nunn. Then Senator Nunn and I talked when he came back, after I had resigned. I had resigned to take the new job, Senator.

Senator **Kasten**. Senator Inouye?

Senator **Inouye**. Just a matter of clarification. I believe in response to Senator Cannon, you said that Mr. Bowdach requested your assistance with the Parole Commission in the summer of 1979?

Mr. **Adkinson**. Well, I think if that's what I said, it does deserve clarification. Mr. Bowdach came back through the subcommittee from the point of view that the subcommittee had to devote its attention to his situation in the context of the earlier representations made to him.

I don't recall him contacting me specifically and saying, "I'm having this parole problem." It was something that had been discussed, I'm sure, with me and with Mr. Bowdach and Senator Nunn directly.

Senator **Inouye**. Did you do anything about it?

Mr. **Adkinson**. I think that the Senator sent a letter to the Department of Justice encouraging them to at least afford the opportunity for a parole hearing. That is my recollection. But again, Senator, I don't have the files.

Senator **Inouye**. What was the date of the contract?

Mr. **Adkinson**. I don't know the specific date, Senator. But it was within days before Christmas of 1978.

Senator **Inouye**. So Mr. Bowdach approached you in December 1978. And a few days later, you entered into a contract.

Mr. **Adkinson**. That is correct.

Senator **Inouye**. And a day later you began writing your book?

Mr. **Adkinson**. Well, within the next several weeks over the Christmas recess, I did.

Senator **Inouye**. What were the terms of this contract? You said it is a page and a half, but I gather from your sketch that you did very well in law school, a juris doctor, general counsel. What were the terms?

Mr. ADKINSON. The terms, as I recall them, Senator, called for me undertaking to write, him undertaking to collaborate on the writing. If we did do that and a publisher was found and money was forthcoming, then we would share that money equally.

Senator INOUYE. Fifty/fifty?

Mr. ADKINSON. Yes, sir.

Senator INOUYE. What happened to this contract?

Mr. ADKINSON. We just didn't perform it.

Senator INOUYE. I mean the document.

Mr. ADKINSON. I don't know. I considered it a nonevent about February and just don't have it. I mean, it is not any great secret. I remember the terms of it. If I had it, I would be happy to produce it. I thought in fact that I did but I evidently threw it out because it really became, as we realize today sitting here, a significant event.

But at the time, it really was a nonevent once it was abandoned.

Senator INOUYE. You felt that the allegations and charges levied against you by the staff was unfounded?

Mr. ADKINSON. Oh, yes, sir. Three and a half of the four were unfounded, yes, sir.

Senator INOUYE. Three and a half of the four?

Mr. ADKINSON. Yes, sir. There was a series of allegations that I was confronted with.

Senator INOUYE. What did you do about this?

Mr. ADKINSON. I became extraordinarily distressed because of the severity of the allegations. In a written communication to the chief counsel who had confronted me with the allegations, I demanded an immediate referral to the Department of Justice for an investigation of these allegations.

Senator INOUYE. Was it referred?

Mr. ADKINSON. Yes, sir.

Senator INOUYE. Any findings?

Mr. ADKINSON. I was told by the FBI agent that it was closed.

Senator INOUYE. In your mind, was your employment terminated by the committee, or did you resign?

Mr. ADKINSON. Senator, in my mind, I resigned to take my new job. I would be the last to speculate as to what the attitude of all parties would be had I not had this new job. The situation was exacerbated because the principals involved seemed to refuse to believe that I in fact had a new job and went so far as to interview staff to see if they had any indications that I had in fact been looking for a job.

I had. If the thrust of your question is whether I resigned in lieu of being fired, if that was Senator Nunn's intention, he never communicated it to me.

Senator INOUYE. Now, your contact with Mr. Bowdach began in March of 1978.

Mr. ADKINSON. As best I can recall, Senator.

Senator INOUYE. It was rather intensive from that day until when, sir?

Mr. ADKINSON. It was sporadically intensive from that day through the executive session and then through the public hearing.

When I say sporadically, Mr. Bowdach was under sentence. He was in the witness protection program in the custody of the marshals. So in order to interview him, it was rather like a major troop movement. Arrangements had to be made for periods of time to debrief him. Those arrangements were made on several occasions as different factors of the subcommittee staff had to involve themselves in the process.

Senator INOUYE. During that period, was the book ever discussed?

Mr. ADKINSON. Absolutely not, Senator.

Senator INOUYE. Thank you.

Senator KASTEN. I would like to announce to the committee that we have now completed one round of questioning. I would like to also thank the members of the committee for working within the general timetables of the 5-minute rule.

I know that everyone has a number of questions and I am pleased that we have been able to proceed in a deliberate and businesslike way. We will now begin with another round of questions.

Senator FORD. The chairman does not have 5 minutes?

Senator KASTEN. I am going to give up my 5 minutes but I am going to allow us to pursue the general thrust of these questions. I have some questions about Federal Trade Commission issues.

Mr. ADKINSON. I am glad to hear that, Mr. Chairman. [Laughter.]

Senator KASTEN. I guess Senator Long is no longer with us. Senator Packwood?

The CHAIRMAN. Mr. Chairman, I was just going to get into Federal Trade Commission issues.

We have discovered on this committee that a shift of chairman and membership can result in a dramatic difference in the interpretation of the law. I am thinking more of the Interstate Commerce Commission.

You have no background in antitrust or particular antitrust experience?

Mr. ADKINSON. No particular experience.

The CHAIRMAN. Do you have any feelings about antitrust?

Mr. ADKINSON. Yes. I am a firm believer in a vigorous enforcement of the antitrust laws for openers.

The CHAIRMAN. We are all for that. What else? I would hope you would be for vigorous enforcement of the antitrust laws.

Mr. ADKINSON. There has been some discussion as to whether the Federal Trade Commission should continue to be in antitrust law. It is in that context that I open with that remark. I think the Federal Trade Commission can and should be a very integral part in protecting the consumers' well-being, competitive well-being and the well-being of the Small Business Administration in the short and long term. I watched with great interest and sensitivity the hard times that it fell on the past several years.

In the context of that and in the climate that pertains today, I think that there is a particular emphasis on a very vigorous Federal Trade Commission.

The CHAIRMAN. You think there ought to be any limit on sizes of conglomerates?

Mr. ADKINSON. Well, Senator, as you know, there is legislation that addresses itself to mergers and gears it to size. There will come a point in my mind when the development of conglomerates at a certain size should become a concern to this body and to others simply because of the ripple effect that that has in other areas.

The CHAIRMAN. What size do you think that is?

Mr. ADKINSON. I have no fixed size in mind. I would hate to take a per se approach as to size. I think that is something that needs to be watched very carefully.

The CHAIRMAN. Is it the size or is it the percent of the market? I am curious. Mobil wants to buy Marathon Oil. At what stage do you finally say this concentration is too great, even though we don't find any anticompetitive practices yet or any other violation of the law? Is size in and of itself at some stage dangerous and a violation in your mind of the present antitrust laws?

Mr. ADKINSON. I would suggest that at some stage, size would be a major factor worthy of consideration.

The CHAIRMAN. Do you think size in and of itself, now, would be a violation of the current antitrust laws?

Mr. ADKINSON. No.

The CHAIRMAN. So you see nothing then that you could do to prohibit any of these mergers coming down the line based upon size alone?

Mr. ADKINSON. Well, we have merger guidelines that are geared to size, geared to market shares which, as you know, are being revised because there is a general consensus that there should not be a slavish adherence to market share as a dispositive factor.

Other factors have to be brought to bear. One thing I think the Federal Trade Commission ought to do is discharge its mandate to investigate and report to this body on certain areas that are of emerging and intense concern to this body and others. The merger wave would be one of those that I would recommend they look at.

The CHAIRMAN. That is a nonsequitur as an answer. The present laws apparently do not take size alone as a factor. They will go into market share and other areas. You have companies such as Mobil and Marathon involved in two different facets of supply, Mobil supplying its own dealers and the other supplying independent dealers in competition with Mobil's dealers.

I want to know if as a Commissioner you would recommend that if the present laws don't apply to size, that they ought to be changed when they reach some size where rational people say that is enough?

Mr. ADKINSON. I would suggest a thorough evaluation ought to be made of that very point so we can collectively determine whether there should be a point when size becomes dispositive, Senator.

The CHAIRMAN. Let me change the subject. Do you think it is the obligation of the FTC, within the limits of its purview, to try to protect consumers from hazards that they cannot know about?

Mr. ADKINSON. Yes, I do.

The CHAIRMAN. The consumer would not know about hazards nearly as well as the vendor. Between the two—the vendor and the consumer—where should an obligation lie to look for defects?

Mr. ADKINSON. I agree with the general thrust of what you are saying, Senator. The ability to supply the information, the nature of the latent defect, the ability of the market itself to disclose the defect after taking into consideration, if you have a market deficiency to the extent that the information is not being disseminated, I think the Federal Trade Commission should step in and make sure the information is disseminated.

The **Chairman**. Between the seller and purchasers of used cars, who ought to be responsible for the possible defects in the cars and the notification?

Mr. **Adkinson**. That would be a sensitive question in my opinion because of the used car rule situation which may end up back at the Federal Trade Commission. I would probably do well not to take a particular position other than say that as between the seller and the buyer, the seller is of course in a much better position to know what is involved with the automobile than the buyer in the abstract.

The **Chairman**. There are very few of us that could go buy a car in the abstract or otherwise, that would know more about the person selling the car if the person is in the business of selling the car.

Mr. **Adkinson**. That is correct, as is true with most other products.

Senator **Kasten**. In written response to the committee's questions, you stated: "you recognize the legitimacy of the question of whether the FTC should get out of the antitrust area."

Could you elaborate on that statement?

Mr. **Adkinson**. Mr. **Chairman**. There is great dialog, as we all know, among scholars of the Federal Trade Commission with regard to whether there ought to be the duplication. Now, insofar as recognizing legitimacy, it is legitimatized by virtue of the fact that there are very solid minds that agree or disagree on whether it should.

It is my belief that the Congress has mandated the Federal Trade Commission to enforce the antitrust laws. It made that decision based on the fact that it presumed at the time and recognized it at least overlapped in certain areas. The concern that I have is that there would be a precipitous rush to judge to divest the Federal Trade Commission of its antitrust authority at this particular time, which I would be very much opposed to. I think it would be inconsistent to take the antitrust authority away from the Federal Trade Commission at the same time we are moving forward with the deregulation that is so long overdue.

Senator **Kasten**. I am pleased with your response. I am happy that we had an opportunity to elaborate on it. One of the questions that has been before this committee and the subcommittee, in questions to Jim Miller, in other debates and discussions in the Appropriations Committee and also on the floor of the Senate, has been not so much the question of that decision, but who should make it.

It is my strong feeling and the strong feeling, I know, of the members of this committee that if we do make any moves, if we do make any changes, if we do make any cutbacks, if we make substantial changes in the FTC role as it relates to antitrust, that those changes ought to be mandated by the Congress, ought to be voted on by the Congress, ought to be discussed in these committees and ought not to be forced upon us by views of the Commission or the Commissioners and ought not to be forced on us by budgetary changes.

So, I am pleased with your statement. I think it is important, as we work through these hearings, that we on the legislative side of this reemphasize our strong concern that these decisions are going to be made here in the legislative process because it is a legislative mandate which has established the FTC antitrust enforcement provisions at this time.

Obviously, we are going to be seeking the opinions and the advice of counsel of a number of different people, including people at the FTC. But this is not a decision that's going to be forced upon us. It is a decision which we, as legislators, will initiate.

Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman. Mr. Adkinson, getting back to the chronology of events for a moment, you first met Mr. Bowdach in March or April, I think you said, of 1978. And then, in May, is it correct that Gary Bowdach wrote a letter to the Permanent Subcommittee on Investigations and then had discussions with you at that time concerning the possibility of testifying?

Mr. ADKINSON. That is entirely possible, Senator. I don't recall that. We talked with him, primarily at the request or at the suggestion of the Department of Justice. I don't recall that he made a proffer in a letter certain to testify. But perhaps he did?

Senator CANNON. In June, did you meet with Bowdach in San Diego?

Mr. ADKINSON. I and others met with Bowdach in San Diego, but I don't remember when.

Senator CANNON. Did he ask you for help in certain things at that time, including the getting of a job?

Mr. ADKINSON. Oh, that. I think you are referring to, if I may, the conditions precedent to Bowdach's willingness to appear in a public session before the Senate. One of those conditions was getting the marshals service, because he was in the witness protection program, to address with specificity what they were willing to do for him.

Senator CANNON. Did they do that, spell out what they would be willing to do?

Mr. ADKINSON. Absolutely.

Senator CANNON. You brought him here in August of 1978 for the hearings?

Mr. ADKINSON. He came back earlier for an executive session appearance in July and then again in August.

Senator CANNON. Immediately after the hearings about August 15, did you write a memo to the subcommittee recommending what the subcommittee should do for Gary Bowdach?

Mr. ADKINSON. I would be happy to review a copy of it if you have it, Senator. You have the benefit of the files, and I don't.

Senator CANNON. I don't happen to have that. I wonder if you don't recall whether you did.

Mr. ADKINSON. It's entirely possible I did. I just don't recall.

Senator CANNON. Did you recommend that the subcommittee write letters on behalf of Gary Bowdach to the trial judge and the Parole Commission and, also, to the Attorney General?

Mr. **Adkinson**. It is entirely possible.

Senator **Cannon**. In August of 1978?

Mr. **Adkinson**. Yes, after his appearance. I think that would have a memorialization of the recommendations made by the Senators to Mr. Bowdach.

Senator **Cannon**. Did you also, in August, try to find some solution to help him with his particular case, with the problem that he had?

Mr. **Adkinson**. I am not sure I understand what particular problem you might be referring to.

Senator **Cannon**. Well, did he have more than one? What was his basic problem at that time?

Mr. **Adkinson**. His basic problem was being incarcerated and in fear of being killed.

Senator **Cannon**. You said he was out at that time. This is August of 1978.

Mr. **Adkinson**. No, sir, Senator. In August of 1978, he was still incarcerated.

Senator **Cannon**. So he was interested in getting out on parole at that time, is that correct?

Mr. **Adkinson**. Absolutely, and communicated this to the Senators. Let me make one thing clear for the record. There were no warranties or representations made to Mr. Bowdach by me or anyone else on the staff that didn't have the concurrence of the Senators involved.

Senator **Cannon**. When was Bowdach released by the court?

Mr. **Adkinson**. In either late November or early December. I don't know the specific date.

Senator **Cannon**. So that that was the release prior to the decision in the *Addonizio* case. Is that correct?

Mr. **Adkinson**. When was the decision in the *Addonizio* case?

Senator **Cannon**. Certiorari was filed by the Department of Justice in July of 1978. Were you familiar with what effect the *Addonizio* case might have on this?

Mr. **Adkinson**. I have a vague recollection of some discussion of it. It seems to me that that case might have disposed of the issue, if it had gone one way or the other. But I don't recall the circumstances of the case.

Senator **Cannon**. Would it have disposed of the issue by requiring him to go back to jail after he had been permitted out on parole?

Mr. **Adkinson**. I simply can't recall.

Senator **Cannon**. You don't recall that. Did you discuss with Bowdach in December of 1978 the effect of the *Addonizio* decision that might cause him to go back to jail?

Mr. **Adkinson**. No, sir.

Senator **Cannon**. He was out on parole at that time?

Mr. **Adkinson**. No, sir. He was a free man in December of 1978.

Senator **Cannon**. In December of 1978?

Mr. **Adkinson**. Yes, sir. He was released in late November, early December 1978.

Senator **Cannon**. He was released on parole November 21, 1978, paroled and placed in the witness protection program.

Mr. ADKINSON. Then you have enough that is inconsistent with my distinct recollection of it, Senator. The result of the judge's decision was to release him as a free man. He ended up on parole at a later date and, I think, probably today is on parole.

Senator CANNON. Mr. Chairman, my time is up.

Mr. KASTEN. Senator Danforth?

Senator DANFORTH. Mr. Chairman, there is in the biography of Mr. Adkinson on page 2, a list of his political affiliations indicating, among other things, that he has been a registered Democrat since 1966, member of Young Democrats, University of Virginia, member of Young Democrats, Fairfax County, member of Fairfax County Democratic Committee, Delegate to Virginia State Democratic Convention and so on.

Is this a part of the record?

Mr. KASTEN. I think the Senator's suggestion is a good one. I would ask, without objection, to make Mr. Adkinson's biography that he has provided to the committee including his Democratic affiliations, a part of the record of the hearings. Is there objection?

Senator FORD. Mr. Chairman, as long as he is recorded as national director of the Democrats for Reagan-Bush.

Mr. KASTEN. His entire résumé may well be included as part of the record.

Senator DANFORTH. Did you intend, when you became national director of Democrats for Reagan-Bush, to remain a Democrat or did you intend to, in effect, resign from the Democratic Party?

Mr. ADKINSON. No, I intended to remain a Democrat and have remained a Democrat.

Senator DANFORTH. And you consider yourself a Democrat today?

Mr. ADKINSON. Yes, sir.

Senator DANFORTH. You stated that sometime around Christmas of 1978, you entered into a contract with Mr. Bowdach and then at some time subsequent, you and he agreed together that the book would not be written and, in effect, your contractual and business relationship was terminated. Is that right?

Mr. ADKINSON. That's right, sir.

Senator DANFORTH. About what time would that have been terminated?

Mr. ADKINSON. I don't recall with any particular degree of specificity, but my best recollection is late January or early February.

Senator DANFORTH. During that time between December when you entered into the contract and late January, early February, when it was terminated, what was the legal status of Mr. Bowdach to your knowledge?

Mr. ADKINSON. To my knowledge, his status was he had been released from prison. He was a free man.

Senator DANFORTH. Was he facing any threats at that time by the judge or by the Justice Department or by anybody else, to be returned to prison?

Mr. ADKINSON. No, sir, not to my knowledge.

Senator DANFORTH. Did he express to you during that period of time of your contractual arrangement, any concern that he might be incarcerated or that the terms of his release might be changed and he would end up being back in prison?

Mr. ADKINSON. I don't recall any such discussions during that period of time.

Senator DANFORTH. During the time when you had a contractual relationship with him, did he ask for any help with any legal matter before either the Justice Department or the courts?

Mr. ADKINSON. It is my present recollection that he did not, Senator.

Senator DANFORTH. During that period of time, to your knowledge, did you use your position as a member of the subcommittee staff to help him in any way?

Mr. ADKINSON. It is my present recollection that I did not.

Senator DANFORTH. While you were a member of the subcommittee staff, during the period of time you were having sporadic, frequent, and sometimes intense meetings with Mr. Bowdach, were those meetings just between the two of you?

Mr. ADKINSON. No, sir, Senator. We have a policy on the subcommittee of never being alone with a witness. So there would always be at least one other present. In his case, often we would have the marshals present as well, because he was in their custody.

Senator DANFORTH. During that time, was there any discussion about writing the book or any other relationship with Mr. Bowdach of a private business nature between you and him?

Mr. ADKINSON. No, sir.

Senator DANFORTH. Your answer is no?

Mr. ADKINSON. My answer is definitely no.

Senator KASTEN. Senator Ford?

Senator FORD. Well, since the political affiliation has been brought to light by my colleague, have you ever campaigned for any other Republican candidate other than the President and the Vice President?

Mr. ADKINSON. No, sir, Senator.

Senator FORD. Have you had any discussion with the members of the Commission or the White House as to any pending issues or pending business at the Federal Trade Commission?

Mr. ADKINSON. No, sir, Senator.

Senator FORD. Who contacted you to ascertain your interest in becoming a member of the FTC?

Mr. ADKINSON. The staff of Pendleton James at the White House.

Senator FORD. Were you contacted about or did you pursue any other position requiring nomination or appointment by the President?

Mr. ADKINSON. There was interest expressed by the Department of Justice and by me in a position at the Department of Justice that never reached fruition. I was pursuing that at the time the Federal Trade Commission was presented to me.

Senator FORD. So you were contacted to accept this nomination? You did not contact those in authority for the position?

Mr. ADKINSON. No, sir. I was contacted and had a meeting to determine my interest in the position.

Senator FORD. Can you give this committee a list of the areas which you think the FTC should be doing less and the areas in which the FTC should be doing more with respect to antitrust?

Mr. ADKINSON. Yes, sir, Senator. I think that my response to that is included in the prepared responses.

The areas that I think the FTC should be doing less are those cases which I would deemphasize, cases based upon novel or untested theories, or cases that are based on vague or unformed theories.

The areas that I think that it should emphasize are taking a careful look at horizontal merger activity; a careful look at vertical merger activity where it can be demonstrated that there is evidence of competitive harm, consumer harm, and harm to the small business community.

I also think we should keep a watchful eye on emerging trends with regard to conglomerate merger activity, a matter that Senator Packwood expressed interest in.

Senator **Ford**. After reading your prehearing response and having a conversation with you, I have identified three areas where you appear to depart dramatically, I think, with the new FTC Chairman's position.

One is antitrust authority should remain in the FTC, that independent agencies should not be subject to OMB veto of rulemaking activities, and that advertising substantiation is a valuable enforcement tool.

Would you comment on those three areas in which I detect your difference with the present Chairman of the FTC?

Mr. **Adkinson**. I would be happy to, Senator. As I mentioned in an earlier response, I think that the FTC should stay in the antitrust law enforcement business until this body determines otherwise.

It is my internal belief that it has a role to perform. Elaborating just a bit, one of my major concerns is the ability of the FTC to conduct sophisticated antitrust investigations. I think that the ability is there. I would be interested in seeing it channeled to specific matters.

With regard to your observation with regard to independent agencies and OMB approval, I feel, perhaps because of my experience here on the Hill, very strongly about OMB signoff approval with regard to independent agencies.

I do not think they should have it. I think it is inconsistent with the concept of an independent agency. I would not be opposed to simultaneous notification of OMB and Congress as the action takes place.

Senator **Ford**. That's one of the problems we have now. OMB wants to have authority over what Congress does. That's one of the regulatory problems we are involved in. I see the caution light is on.

Mr. **Adkinson**. You mentioned a substantiation. While I have heard some criticism, Senator, as we all have, of certain aspects of it that go to the implementation or enforcement as opposed to the concept, I think it is a concept that is generally recognized as having had value to the consumer.

Senator **Kasten**. Senator Inouye?

Senator **Inouye**. When was the Democrats for Reagan-Bush organized?

Mr. **Adkinson**. Shortly after Labor Day of last year.

Senator **Inouye**. And you were the national director? You were?

Mr. **Adkinson**. Yes, sir.

Senator **Inouye**. Were you appointed or elected to that position?

Mr. ADKINSON. Nothing quite as official as that. I was approached to see if I would be willing to undertake the proposition, and I was willing to, and submitted my ideas on how I thought it might best be accomplished on the basis of the proposal I made. And I was asked to come aboard and implement it.

Senator INOUYE. When was that, sir?

Mr. ADKINSON. Excuse me?

Senator INOUYE. When was that?

Mr. ADKINSON. I think I actually physically went over there to implement that right after Labor Day, September 7, 8, 9. I could document that for you with specificity if you wish.

Senator INOUYE. Am I correct to assume that you commenced your active support for Governor Reagan before Labor Day?

Mr. ADKINSON. I was very supportive of Governor Reagan before Labor Day.

Senator INOUYE. When did you begin your active support?

Mr. ADKINSON. I went over to the campaign headquarters right after Labor Day. That's what I would call active support in the sense of implementation of support.

Senator INOUYE. Even if your support was not known publicly, they selected you to be national director?

Mr. ADKINSON. Yes, sir. We had had preliminary discussions, Senator. I don't want to create a misimpression here. I didn't walk in the door on September 7 and say, "Here are my ideas. I'm ready to sign up."

There had been preliminary discussions with various key players in the national campaign over the course of that summer, with regard to my interest, my ideas as to how it might best be implemented.

Senator INOUYE. So they didn't just pick you out of the blue?

Mr. ADKINSON. No, Senator.

Senator INOUYE. So you were in contact with them for a week? Two weeks?

Mr. ADKINSON. Excuse me?

Senator INOUYE. Two weeks? Three weeks? I'm curious.

Mr. ADKINSON. I think the first discussions of it occurred even before the convention, Senator. I know for a fact they did, yes.

Senator INOUYE. Getting back to Mr. Bowdach, from March 1978 through August 16, 1978 you had intensive but sporadic meetings with him.

That's your testimony?

Mr. ADKINSON. Yes, sir.

Senator INOUYE. Now, during that time was it your job to assist him in preparing his testimony?

Mr. ADKINSON. It was the job of myself and others in preparing the witness sheets and preparing the statements for the Senators and other aspects that you are familiar with that go on up here in preparation for a hearing.

Senator INOUYE. Was he instructed as to how to present his evidence?

Mr. ADKINSON. Was he instructed as to how to present his evidence. What we did, Senator, is conduct extensive debriefings and an 8- or 10-hour executive session at which the Senators present determined that the most effective way to present his testimony in a public forum would be to have him testify on 5 separate days, addressing each of the components of his career on each of those days.

Senator INOUYE. Using a lay term, did you coach him?

Mr. ADKINSON. No, Senator. I did not coach him.

Senator INOUYE. I believe this is one of the allegations that you coached him.

Mr. ADKINSON. There are allegations that I tampered with his testimony in the context of causing him to say things that he would not otherwise say or not say things that he might have wanted to say and I did not do that, Senator.

Senator INOUYE. And in your mind, you are a Democrat at this time?

Mr. ADKINSON. Yes, Senator.

Senator INOUYE. And you feel that you will fulfill the requirements of section 41 of the law that says no more than three shall be of the same political party?

Mr. ADKINSON. Yes, sir, I do believe that I fulfill that requirement. I think perhaps, if I may elaborate, that once one looks at the Democratic credentials, and I have been questioned by some individuals over the past several weeks, that you then have to look at my philosophies, my interest, where I am coming from to see whether, in your judgment, I meet the literal part of that rule and the spirit of the rule.

Senator INOUYE. And I gather you support the Presidency of Ronald Reagan?

Mr. ADKINSON. Yes, Senator, I do.

Senator INOUYE. Thank you.

Senator KASTEN. I would like to announce that there is a vote beginning right now on the floor on the Alaskan Natural Gas Pipeline. We have one further Senator in my 5-minute process right now, Senator Pressler, who has arrived. It would be the Chair's intention to have Senator Pressler ask his 5 or so minutes of questions. We would then recess, go to vote, and the hearing would resume at roughly 12 noon.

It would be my intention to continue through the lunch hour to make it possible for Senators to ask additional questions if there are additional questions.

It is also my intention to invite Senators to submit written questions which would then be turned over to or communicated to the witness and he would have an opportunity to answer those questions and get back to us with the answers in a timely fashion.

Senator Pressler?

Senator PRESSLER. Thank you, Mr. Chairman. I may have some written questions in addition to these if I do not get back at the proper time.

I want to get some of your philosophy on the relationship of the Federal Trade Commission to the Congress. First of all, what do you think of our concept of the legislative veto that we now have?

Mr. ADKINSON. I think the legislative veto, if I may be candid and perhaps bold, is a manifestation or a symptom of a problem, and a very legitimate effort by this body to address that problem which goes to whether agencies are fulfilling their mandate or exceeding it. I would hope that the legislative veto, which I support because of the need for it, in the present situation would be restricted to avoiding second guessing the facts in a particular situation and would concentrate on whether the agency had exceeded its statutory authority or had exceeded the policy mandate of this body and whether it violated its own internal procedures with regard to due processes.

Senator PRESSLER. The thing I am interested in of course has been asked earlier about the so-called used-car regulation. But Senators signed a letter about a year ago asking the FTC not to implement that regulation. Yet, the FTC went ahead and did it anyway.

What about a clear signal from Congress such as that? As a Commissioner, how would you weigh over half the Members of the Senate requesting an agency not to do something? Would that factor in your decisionmaking process?

Mr. ADKINSON. Absolutely, Senator. I think that the Federal Trade Commission fell upon the hard times that it has because perhaps even an inadvertent insensitivity to the wishes of this body. I would hope that over the immediate long range that those situations would not be presented because the undertakings would be narrowed in focus and substantiated so that this body and the purported regulated industry would recognize the merit.

I would hope that at some point the credibility of this agency and others might be such that this Congress could avoid inviting upon itself the kind of additional lobbying and time constraints that are placed in exercising that legislative veto.

Senator PRESSLER. I am currently involved in that used-car effort, regarding that regulation. I would rather not be involved in it, really, because I think that if the signals that were sent between Congress and the FTC had been followed, we would not be involved in that.

Do you have a feeling that the FTC has a tendency to want to legislate? There are some things that we are supposed to do up here. But I get a feeling and I have had this feeling in my 6 or 7 years in the Congress, that the FTC very much wants to get into the legislative process. Have you had that feeling?

Mr. ADKINSON. I have had that feeling. I have also had the feeling that in that process, it has almost, at least in the recent past, come up with an agenda for self-destruction. If you look at the kinds of or the plethora of rules that were on its platter some years ago, you would see a situation where you have all the ingredients for having spread yourself to thin, moved into too many areas and succeeding in few.

Going specifically to your point, though, in the context of doing what you suggest you fear they may be doing, particularly in the rulemaking area, it is my opinion that they tended in the past to go backwards.

They will come up with a proposed rule which will polarize this body and the affected industry. They will spend 2 years nibbling away at it. The end result will be focused. But the FTC for example has at that point got the worst of all worlds.

Senator PRESSLER. So, in other words, as a Commissioner, you would be careful that the FTC would not get into the legislating business?

Mr. **Adkinson**. I think it has enough to do without assuming that additional burden, Senator.

Senator **Pressler**. What about the division of regulatory duties between State and Federal bodies? Is there an overlap here? How would you address that at the Commission?

Mr. **Adkinson**. I would address it with great care because of my sensitivity to the State preemption situation. I am not ruling out the need if you have got a market condition that has had a negative impact on the consumer by virtue of a State granted monopoly in the regulatory area. But I think it should be approached with great caution.

Senator **Pressler**. Mr. Chairman, thank you. I have some more questions. I will probably submit them in writing if I don't get back at the appropriate time.

Senator **Kasten**. The opportunity to submit questions in writing for Mr. Adkinson will remain open to all members of the committee.

Pursuant to the announcement made by the Chair earlier, the committee will now recess to vote on the Alaskan natural gas pipeline. It is my intention to reconvene the committee at 12 noon or shortly thereafter. It is my intention to go through the noon hour and go until 1 or 1:30. We will see how we do in terms of responding to questions. I think we have made great progress this morning. Then we will determine where we are.

[Voting recess.]

Senator **Kasten**. The committee will come to order.

At the request of Senator Cannon and other Senators, I would like to ask the witness to be officially sworn in. That's something I should have done at the beginning of the hearing. I am assuming that it is possible to do this retroactively, although that might not be the proper word.

But Mr. Adkinson, if you would please stand and raise your right hand.

[Witness stands and raises his right hand.]

Senator **Kasten**. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God.

Mr. **Adkinson**. I do.

Senator **Kasten**. Thank you, and we will proceed as if that oath had been taken at the beginning of the hearing and that you have sworn to all of your testimony this morning, as well as whatever testimony may follow.

As I stated earlier, it is my intention because of the time constraints that we are forced to deal with in the Senate, to try to press on with these questions and with the hearings.

It is also my understanding, and Senator Cannon, I just heard from staff that Mr. Steinberg was present for at least part of the time this morning. There has been a request, I believe from the minority, that Mr. Steinberg be invited as a witness.

Senator **Cannon**. Yes. I have requested that he be called as a witness. However, I doubt that we can get to him today for the reasons I have indicated to you. When I finish here, I do have another matter. I have an amendment to come up on this bill that I am managing on the floor.

So perhaps when we conclude today, if we could go over until tomorrow, then I could have Mr. Steinberg here in the morning.

Senator **Kasten**. It would be my strong hope and desire, especially if there are no Senators present, that we will simply let you proceed with your line of questions and we will keep a rough track of time.

I know that you have an appointment at 1 o'clock and that you have another at 2 o'clock. It would be my hope that we could proceed with as many questions as possible now.

I still wouldn't want to give up on the outside chance that we could reach Mr. Steinberg by telephone and ask him to come over and testify before the committee and work that within the time and scheduling problems that we have all got. But let's see how we do.

Senator Cannon?

Senator **Cannon**. Thank you very much, Mr. Chairman.

Mr. Adkinson, I hate to be repetitive, but I'm not sure that I have clear in my mind the situation with respect to Mr. Bowdach. Now, let me just go over it very briefly and see if I understand it correctly.

When you first contacted Bowdach, he was not then released from prison. Is that true? He was incarcerated as a convicted felon?

Mr. **Adkinson**. Yes, sir.

Senator **Cannon**. Your interviews with him were initially at the time that he was in prison? Is that correct?

Mr. **Adkinson**. Yes, sir.

Senator **Cannon**. Then, you finally got him released under what circumstances to come before the committee?

Mr. **Adkinson**. Well, his appearance was arranged with the cooperation of the Department of Justice.

Senator **Cannon**. Technically he was still in custody and had just been released from prison to come to testify before the committee?

Mr. **Adkinson**. He came in custody, yes, sir.

Senator **Cannon**. Then, in November, then, of 1978, the judge issued an order releasing him. Is that correct?

Mr. **Adkinson**. That is my recollection.

Senator **Cannon**. And at or about that same time, a writ of certiorari, or prior to that time, a petition was filed in the *Addonizio* case which would have an impact on Mr. Bowdach requiring him to go back to jail if that case were reversed, if the writ for certain were granted.

Is that right?

Mr. **Adkinson**. I'm not familiar with that set of circumstances, but that is entirely possible.

Senator **Cannon**. The memos that I have read indicate that you were familiar with it at the time as to what precisely happened there in that circumstance.

Now then, once the writ was granted in the *Addonizio* case, that required that Bowdach then go back to prison. Do you recall a court decision coming out that would have required Bowdach to go back to prison? Is that correct? That was in 1979.

Mr. ADKINSON. I don't recall that, Senator. I recall that the Justice Department filed its petition for appeal to preserve their right to move forward with the case.

Now, if you read the files and there are memos in there that I haven't seen that are written by me, and address the issue, then while I might be more lucid if I saw them, I'm happy to do the best I can in the abstract.

Senator CANNON. At the time then that Bowdach appeared before the subcommittee and testified, he was in custody as a convicted felon?

Mr. ADKINSON. Yes, sir.

Senator CANNON. Thereafter, he was released. After his release is when you entered into the agreement with him concerning the book.

Mr. ADKINSON. That is correct.

Senator CANNON. Now, who was present with you when you entered into that agreement with Bowdach?

Mr. ADKINSON. No one.

Senator CANNON. I thought you testified to Senator Danforth that you never, it was a policy of the committee never to meet with a witness alone at any time.

Mr. ADKINSON. I did so testify, Senator. But the book contract was discussed with him alone after he was released and after he was out of the custody of the U.S. marshals.

Senator CANNON. I see. So you considered that he was not a witness then at that time, and your discussion with him was just between the two of you?

Mr. ADKINSON. That is correct.

Senator CANNON. Who drafted the written agreement on that?

Mr. ADKINSON. I did, Senator.

Senator CANNON. Did you both sign that?

Mr. ADKINSON. Yes, sir.

Senator CANNON. When did you first—did you ever destroy that agreement?

Mr. ADKINSON. No, I didn't destroy it consciously. I seem to have lost it.

Senator CANNON. Well, did you represent to Mr. Steinberg that you had a copy of the agreement and you would return to the committee with it?

Mr. ADKINSON. You mean in the meeting on August 9?

Senator CANNON. Yes.

Mr. ADKINSON. Yes, I did.

Senator CANNON. And you would return the next day with a copy of the agreement?

Mr. ADKINSON. Yes, sir.

Senator CANNON. Did you return with a copy of the agreement?

Mr. ADKINSON. No, sir. I preferred to deal with Senator Nunn. I told them I would prefer to provide it to the FBI. In the meantime, I had to look to see if I had it.

When I spoke, I thought I did.

Senator CANNON. Did you give a copy of the agreement to the FBI?

Mr. ADKINSON. No. It was at that point that I looked and did not in fact have it.

Senator CANNON. Was there an original and some copies of the agreement?

Mr. ADKINSON. I don't recall.

Senator CANNON. Well, did you give a copy to Bowdach?

Mr. ADKINSON. I don't know whether I gave him a copy or he made a copy. I just simply don't recall.

Senator CANNON. Where did you put your copy of that contract?

Mr. ADKINSON. I left it with the person who had typed it, Senator.

Senator CANNON. Who typed it?

Mr. ADKINSON. A young lady that works for me now, Janine Perrignon, P-e-r-r-i-g-n-o-n.

Senator KASTEN. The Senator will be granted 5 additional minutes.

Senator CANNON. Was she working for you at the time?

Mr. ADKINSON. No, sir. She was working for Blue Cross/Blue Shield. She's working for me now.

Senator CANNON. Where was that typed up?

Mr. ADKINSON. I presume in my home. I handwrote something and she typed it.

Senator CANNON. Where did you and Mr. Bowdach meet to go over this?

Mr. ADKINSON. To go over the agreement?

Senator CANNON. Yes.

Mr. ADKINSON. It was in northern Virginia. It is my recollection that we signed the agreement on a day in December over in northern Virginia.

Senator CANNON. Where abouts in northern Virginia?

Mr. ADKINSON. In a restaurant in northern Virginia. It's on Route 1.

Senator CANNON. Had you met frequently with Bowdach during that period of time?

Mr. ADKINSON. Senator, when Mr. Bowdach was released from prison, he moved to my area to be close to the individual with whom he thought he had the most trusted relationship, which was an individual named William Gallinaro, who had been the investigator handling most of Mr. Bowdach's interrogations.

That individual happened to be located in Harper's Ferry, and Mr. Bowdach, with the permission of the Witness Protection Service and with the knowledge of Senator Nunn, located himself in that general vicinity.

Senator CANNON. How long did he stay in that vicinity?

Mr. ADKINSON. I think he was there over a year.

Senator CANNON. Who was present with you at the time you signed the contract with Bowdach?

Mr. ADKINSON. No one.

Senator CANNON. Not even the lady that drafted the agreement?

Mr. ADKINSON. No.

Senator CANNON. So there were no witnesses?

Mr. ADKINSON. No, sir.

Senator CANNON. Do you remember about when that was in the month of December?

Mr. ADKINSON. It was shortly before Christmas.

Senator CANNON. And you said you wrote how much during the month of December?

Mr. ADKINSON. I don't know whether it was December or the first week in January. But it was sometime during those holidays that I wrote—I don't recall how many pages I wrote, a rough draft of some introductory chapters.

Senator CANNON. Did you meet with Bowdach a number of times during November and early December, November after he was released and moved to Harper's Ferry?

Mr. ADKINSON. I met with him first during December.

Senator CANNON. How many times did you meet with him during December?

Mr. ADKINSON. I can't recall.

Senator CANNON. Did you continue to work on that outline for the book during January?

Mr. ADKINSON. I started and completed my work during the early part of January.

Senator CANNON. Did you send that work off or show it to anybody who was in a position to market the story for you?

Mr. ADKINSON. Absolutely not.

Senator CANNON. Did you ever call or talk to anyone discussing the marketing of the story?

Mr. ADKINSON. No, sir.

Senator CANNON. You discussed it with no one, just you and Bowdach?

Mr. ADKINSON. Yes, sir.

Senator CANNON. Did you ever discuss with anyone besides Bowdach a book or a movie project of any kind?

Mr. ADKINSON. No, sir, Senator.

Senator CANNON. Now, did you report to Bowdach periodically in January on your progress on this project?

Mr. ADKINSON. I may have told him that I was cranking out a few things. I showed it to him sometime in January, early February as best I recall.

Senator CANNON. What happened then?

Mr. ADKINSON. We decided that the work product was not adequate.

Senator CANNON. Who decided that? You decided it or Bowdach decided it?

Mr. ADKINSON. We mutually agreed. I was not pleased with it after I saw the draft and he was not pleased after he saw the draft. He said he was going to go find a professional writer to attempt to write a book.

Senator CANNON. So, did you destroy what you had written at that time?

Mr. ADKINSON. Not that I recall, no.

Senator CANNON. Now, did you have any other discussion with Bowdach concerning any other business venture other than the book contract?

Mr. ADKINSON. No, sir, Senator.

Senator CANNON. When was the last time you talked to Bowdach?

Mr. ADKINSON. It has been within the last year. It has not been within the past 6 or 8 months to the best of my recollection.

Senator KASTEN. Without objection the Senator will be granted an additional 5 minutes.

Senator CANNON. Would it be fair to say that the memoranda that you wrote to the files and to the chairman of the Subcommittee on Permanent Investigations advanced Bowdach's position with regard to recommending the submission of letters or statements to various Federal courts or to the parole commission?

Mr. ADKINSON. I am sorry, Senator. I did not follow you.

Senator CANNON. Would it be fair to say that the memoranda that you wrote to the files of the subcommittee advanced Bowdach's position with regard to recommending the submission of letters or statements to various Federal courts or to the parole commission?

Mr. ADKINSON. I would think it fair to say, Senator, that at various points in the relationship, I implemented the mandate of the senator to make his cooperation known. You are obviously looking at something that I have not seen which I would be happy to look at and refresh my recollection. But it was a general manner of doing business on the subcommittee where I was or Bill Gallinaro when he was there was the contact for Mr. Bowdach. We would forward Mr. Bowdach's concerns to Senator Nunn for his disposition.

Senator CANNON. In your earlier statement, you said that you did not try to help Bowdach get a parole. That would not be correct, would it? You did in fact try to help Bowdach get a parole.

Mr. ADKINSON. I think the question was asked in the context of prehearing and posthearing. There came a time, as I did mention in my testimony, sometime in the spring or summer of 1979 when Mr. Bowdach's parole status became an issue and I reported any facts in that regard to my chairman.

Senator CANNON. You did at that time try to assist him to get a parole, did you not?

Mr. ADKINSON. Senator, I am not in a position to assist anyone in getting a parole. The only value to the subcommittee's efforts would be the chairman's interest in fulfilling his obligations to the witness who had previously testified. If I were part of the implementation of that, it would be in that context.

Senator CANNON. Let me ask you then, did you draft any letters or statements supporting Bowdach's position before any court or parole commission?

Mr. ADKINSON. Did I draft any statement?

Senator CANNON. Yes.

Mr. ADKINSON. Not that I recall, Senator.

Senator CANNON. All right.

Mr. ADKINSON. It is entirely possible, but I don't recall it.

Senator CANNON. Now you started out as an investigative counsel for the subcommittee in your relationship with Mr. Bowdach and at a later date, you ended up working with him to write a book based on his life in crime. How does that come about?

Mr. ADKINSON. Well, it came about, Senator, I guess out of my particular interest in the criminal justice system, in my perception that the work of the subcommittee over the previous 3 or 4 years was geared to pointing out the inadequacies of the Freedom of Information Act, the Tax Reform Act of 1976, other legislative initiatives having a direct or indirect impact on criminal activity, the inadequacy of the witness protection program, the drug enforcement administration, things that we had investigated over a series of years that I had been involved in.

To me, Mr. Bowdach was the single best vehicle through which a meaningful contribution could be made, had I been capable of doing it, to address these very serious issues.

Senator **Cannon**. I think you stated that you never sought approval from the subcommittee chairman or the chief counsel. If you had sought approval, do you think it would have been approved by the chairman of the—the chair counsel, or the Ethics Committee to enter into the agreement that you did while an employee of the subcommittee?

Mr. **Adkinson**. I don't know the answer to that question. If the overriding concern was going to be the interpretation of the rule that appears to pertain today, it is quite likely that it would have been denied. The reading of the rule by me at the time presented no problem. But I can't answer your question. It was not submitted to my knowledge.

I mean I didn't submit it.

Senator **Cannon**. Did you see any apparent conflicts prior to the time you have stated as to the signing of the contract?

Mr. **Adkinson**. Would you mind repeating the question?

Senator **Cannon**. Did you see any apparent conflicts prior to the time you have stated as the signing of the contract?

Senator **Kasten**. Without objection the Senator will be granted an additional 5 minutes. I am assuming, Senator, that other Senators might come. That is why I have asked that the 5-minute time limit continue Senator Cannon.

Mr. **Adkinson**. Not that I recall, Senator.

Senator **Cannon**. Are you familiar with the criminal statute 18 U.S.C. 208? If not let me say that generally, it deals with the personal financial interests or gains of a Federal employee in matters which affect the Government.

My concern is that after you entered into this book contract with Mr. Bowdach, the records of the Subcommittee on Investigations clearly show that you took repeated actions, made repeated recommendations which were clearly in Mr. Bowdach's interest; that is, his release from prison and in the long run I believe in your own personal interest and that was that Mr. Bowdach be released and the two of you continued to pursue this book-movie deal.

What can you say to alleviate the concerns that I have on that point?

Mr. **Adkinson**. My response to that, Senator, is that the efforts died aborning and if you have knowledge of specific activities that took place in the first 3 months or 2 months of 1979, I would be happy to address them because I don't have that in front of me. But it is my distinct recollection that at the time, giving me the benefit of the doubt for a moment, that the time that I took any affirmative action with regard to that book, that there was no activity on Mr. Bowdach's behalf.

I am not saying there wasn't. I don't have the frame of reference. My recollection is that was a very quiet period of his life when he had no apparent problems.

Senator **Cannon**. How did you finally decide to bring the matter of the book contract to the attention of the subcommittee, or did you ever?

Mr. **Adkinson**. When I was confronted with a series of allegations which included the book, I said yes, there was a time when I had an agreement to write a book. I abandoned the agreement and never wrote the book.

Senator **Cannon**. The chief counsel asked you if you did have such an agreement and you then admited that you had?

Mr. **Adkinson**. That is correct. I admitted that and denied several others.

Senator **Cannon**. Do you believe that all of the actions that the committee took on the recommendation of yourself, on Mr. Bowdach's behalf, would have been taken if the committee had been aware of your special relationship with Bowdach?

Mr. **Adkinson**. Yes, sir, I do. I base that statement on the statement that Senator Nunn made to me when we met shortly after August 27 because one of the allegations was that I had abused my office by causing him to undertake certain things he would not have otherwise undertaken.

He dismissed that out of hand by saying that is absolutely ridiculous. We have done nothing otherwise than what I promised I would do when he appeared as a witness.

Senator **Cannon**. Did you ever seek or were you considered by this administration for any other position other than the Federal Trade Commission?

Mr. **Adkinson**. Yes, sir, my name was submitted for another position in the administration.

Senator **Cannon**. Was that the U.S. attorney for West Virginia?

Mr. **Adkinson**. No, sir.

Senator **Cannon**. What was that position?

Mr. **Adkinson**. There was some discussion of Commissioner of Customs.

Senator **Cannon**. Wasn't there an exploratory effort on behalf of yourself as U.S. attorney for West Virginia?

Mr. **Adkinson**. In what timeframe, Senator?

Senator **Cannon**. In 1980 or in 1981?

Mr. **Adkinson**. No, sir, there was an earlier exploratory effort by me and others on my behalf which goes back, I think, to 1978 or 1979; I can't recall.

Senator **Cannon**. As U.S. attorney?

Mr. **Adkinson**. Yes; for West Virginia.

Senator **Cannon**. As a matter of fact, some letters of recommendation were written for you at that time; isn't that correct?

Mr. **Adkinson**. That's probably correct; yes, sir.

Senator **Cannon**. Do you know who wrote those letters?

I'm not asking you to say who wrote them.

Mr. **Adkinson**. Senator, I can't recall. I'm happy to look at them.

Senator **Cannon**. I think you——

Mr. **Adkinson**. If I may clarify the record, in June or July of 1978, Senator Nunn and Senator DeConcini both wrote letters recommending me for head of the Bureau of Alcohol, Tobacco and Firearms.

If we are talking about who wrote letters with regard to positions, I think the record should be complete in that regard.

Senator CANNON. Did I ask you when you last talked with Mr. Bowdach?

Mr. ADKINSON. Yes, you did. I told you that I couldn't recall, but it hadn't been within the last—my guess is not within the last 8 to 10 months.

Senator KASTEN. Without objection, the Senator will be granted an additional 5 minutes for questioning.

Senator CANNON. Do you know what his status is at the present time?

Mr. ADKINSON. No, I don't. I have been advised by others that he's in the witness protection program, has a new identity, and is gainfully employed and evidently doing reasonably well integrating into society.

Senator KASTEN. I'd like to advise the Senator that I understand that Mr. Steinberg is in the audience now.

If it would suit the Senator, we could ask Mr. Steinberg to come forward and ask Mr. Adkinson to remain in the room if we have additional questions.

But at this time, without objection, I would like to ask for Mr. Martin Steinberg to come forward.

Senator CANNON. Let me just ask him one more question. Did you ever talk to Mr. Bowdach after these allegations were made against you?

Mr. ADKINSON. Yes. I talked to him. He called me, I guess, within a week after they had been made because he had heard that something was happening.

Senator CANNON. How did he learn about that?

Mr. ADKINSON. I don't know, Senator. I terminated the phone call very briefly because I did not know who had made the allegations and I wanted no further dealings with him or with the matter, specifically.

Senator CANNON. Thank you, Mr. Chairman.

Senator KASTEN. Is that all?

Senator CANNON. Yes.

Senator KASTEN. All right. Thank you, Mr. Adkinson. If you could remain in the room, please, for possible additional questions, I would like now to ask Mr. Martin Steinberg to come forward.

Mr. Steinberg, in keeping with the general procedure here, I would like to, before you sit down, ask you to raise your right hand.

Mr. STEINBERG. This is Mr. Duffy, who was the general counsel at the time. I have asked him to accompany me at the hearing today.

Senator KASTEN. Why don't you both come forward and then you can take this oath together. If you would, each raise your right hand.

[Witnesses stand and raise their right hand.]

Senator KASTEN. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God.

Mr. STEINBERG. I do.

Mr. DUFFY. I do.

[Witnesses sworn.]

Senator **Kasten**. Mr. Steinberg, begin by introducing yourself with your full name and your present title with the committee. Then, it is my understanding that you may have a brief opening statement, but you are here primarily to respond to questions from the Senators.

TESTIMONY OF MARTY STEINBERG, CHIEF MINORITY COUNSEL, AND LAVERNE DUFFY, CONSULTANT, SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. **Steinberg**. That is correct, Mr. Chairman. I have no opening statement. I'm here to respond to your questions. I am presently the chief minority counsel on the Permanent Subcommittee on Investigations. My name is Marty Steinberg.

Senator **Kasten**. I thank you.

Senator Cannon?

Senator **Cannon**. Why don't you have Mr. Duffy identify himself, too.

Mr. **Duffy**. Laverne Duffy, a consultant to minority.

Senator **Cannon**. Mr. Steinberg, when did you join the subcommittee?

Mr. **Steinberg**. Approximately June of 1979.

Senator **Cannon**. Were you the chief counsel of the subcommittee in August of 1979?

Mr. **Steinberg**. I was the chief counsel and Mr. Duffy was the general counsel.

Senator **Cannon**. In early August did you receive certain information regarding the conduct of a member of the committee staff?

Mr. **Steinberg**. Yes, I did.

Senator **Cannon**. Did that information concern an alleged contract between Keith Adkinson and Gary Bowdach, a witness before the committee?

Mr. **Steinberg**. That was one of the allegations, Senator.

Senator **Cannon**. After you received the information, what did you do next?

Mr. **Steinberg**. Mr. Duffy and I talked over the matter. Senator Nunn was out of town at that time. I attempted for some time to get in touch with him. I finally got in touch with Senator Nunn. He advised me that the procedure we should employ would be to question Mr. Adkinson concerning these allegations.

If Mr. Adkinson admitted the allegations, we were to suspend him with an eye in mind to ask for his resignation. If he denied the allegations, we were to have them further investigated by the appropriate authorities.

Senator **Cannon**. Did you meet with Keith Adkinson on August 9, 1979?

Mr. **Steinberg**. Yes, both myself and Mr. Duffy met with Mr. Adkinson.

Senator **Cannon**. What happened at that meeting?

Mr. **Steinberg**. At the beginning of the meeting, I advised Mr. Adkinson that I wished to question him about a relationship with a prior subcommittee witness, Mr. Bowdach. I told him that he didn't have to answer any questions if he felt he didn't want to.

Mr. Duffy was there. I asked Mr. Adkinson about three or four allegations that had been made to me. Mr. Adkinson admitted that he had entered into a contract with Mr. Bowdach that called for a 50/50 split of profits from a book and movie venture based on Mr. Bowdach's criminal activities.

I asked Mr. Adkinson whether he had ever informed the Ethics Committee or the chairman, Senator Nunn, the prior chief counsel—obviously he hadn't informed me—or anyone else of this venture. He said he had not. He told me he had prepared a book outline which he had turned over to Mr. Bowdach. He said that Mr. Bowdach was a free man when this deal was made.

Mr. Duffy then asked him about the position of using his official position to advance Mr. Bowdach's interests after this contract was entered into, because at that point in time, and for some length of time, the subcommittee was advancing Mr. Bowdach's interests on various fronts: the parole board, the Justice Department, with a Federal judge in Miami, and so forth.

Mr. Adkinson stated that he felt that he would be no longer with the subcommittee when the deal became a reality and he said that that was his justification for not mentioning the financial arrangement with Bowdach to Senator Nunn or the chief counsel or the ethics committee.

I asked Mr. Adkinson for a copy of the contract with Mr. Bowdach. He agreed to provide a copy and said it would take a day to locate it, because he had it locked up somewhere.

I asked Mr. Adkinson whether he was aware of the conflict of interest rule. He stated that he was aware of the conflict of interest rule, but had never checked it out. I then informed Mr. Adkinson that in my opinion, this matter may have to be referred to the Ethics Committee and to the Department of Justice.

I asked Mr. Adkinson if he had ever told Mr. Bowdach to exaggerate, embellish on his testimony before the subcommittee. Mr. Adkinson said, "Absolutely not."

I asked Mr. Adkinson what his present intention was with respect to the book contract, and he stated it was his intention to still complete this transaction.

Senator CANNON. Now, you asked Mr. Adkinson to bring the contract in the next day, on August 10? Is that correct?

Mr. STEINBERG. That is correct.

Senator CANNON. Did he bring that contract in and meet with you on August 10?

Mr. STEINBERG. No, he did not come in that day. He instead sent a package of material to me which did not include the contract. The written material he sent was his version of the contract negotiations and the allegations that had been leveled against him, and his denial of all of those allegations except the contract.

He also in his memos to me requested that we submit the matter to the Department of Justice.

He also submitted a draft resignation letter and a draft response to that resignation letter for Senator Nunn to sign.

Senator CANNON. Now, during the course of the meeting on August 9, did you advise Mr. Adkinson that you would probably recommend to Senator Nunn that the matter be referred to the Department of Justice unless Mr. Adkinson were able to provide some mitigating information or explanation of his conduct?

Mr. STEINBERG. Yes. Both myself and Mr. Duffy told him that.

Senator **CANNON**. Did he at that time make any request of you to submit the matter to the Department of Justice?

Mr. **STEINBERG**. No. That request was not received by me until I received Mr. Adkinson's package on August 10, 1979, the next day.

Senator **CANNON**. Now what action did you take then as a result of the packet and your interview, as a result of the packet that you received on the 10th and your interview on the 9th?

Mr. **STEINBERG**. On August 9 I suspended Mr. Adkinson from his duties with the subcommittee.

Senator **CANNON**. On August 9, you suspended him?

Mr. **STEINBERG**. That is right. We talked about the possibility of terminating his employment. The materials that Mr. Adkinson provided me on the 10th requested a possibility of his resigning from the subcommittee. I received a phone call from Mr. Adkinson on the 11th of August where he stated that he considered Mr. Bowdach an unstable individual who had threatened him in the past and that Mr. Bowdach had even lived with him on one occasion. Mr. Adkinson then stated that he had another job lined up when I first interviewed him, but he had not told me in the past. He stated that he would like to maintain this job and that he asked me to pass his concerns outlined in his letter on to Senator Nunn.

I told Mr. Adkinson that I would recommend to Senator Nunn that he be allowed to resign.

Senator **CANNON**. And did he propose a letter of resignation?

Mr. **STEINBERG**. Yes, he did. In his package on August 10, he had prepared both a proposed letter of resignation and a draft letter for Senator Nunn to sign accepting the resignation.

Senator **CANNON**. And did you require that those be redrafted?

Mr. **STEINBERG**. Yes. It was my advice to Senator Nunn that the letter of resignation should be a letter of resignation, nothing more. And our response should be an acceptance and nothing more based on the fact that there was a potential conflict of interest situation and the matter would be referred to the Justice Department.

Senator **CANNON**. Now did you refer the matter to the public integrity section of the Justice Department?

Mr. **STEINBERG**. I might say that on August 13, we accepted a letter of resignation from Mr. Adkinson. We asked Mr. Adkinson to sign a one-page statement outlining his contractual arrangement with Mr. Bowdach which Mr. Adkinson did sign after he had redrafted portions of it.

We then completed legal research concerning mainly the sections of title XVIII dealing with conflict of interest, sections 201 et seq. The legal conclusion that we came to was that there was a potential of violation of 18 U.S.C. 201, 203 and 208, dealing with unauthorized compensation and acts affecting the personal financial matters of Government employees. After that legal research was completed, I contacted the Senate Ethics Committee and advised them that we had a matter dealing with a member whose acts were not in our opinion consistent with his duties.

I informed the Senate Ethics Committee that we had terminated our relationship with this staff member and I inquired as to whether or not the Ethics Committee still had jurisdiction over a person who was not then a Senate employee.

They stated they were not sure whether they had jurisdiction at that point. On that date which was August 17, 1979, I also contacted the head of the public integrity section of the Justice Department, and I set up a meeting to refer the matter to the Department of Justice.

Later that day on August 17, I hand delivered a letter to the head of the public integrity section referring the allegations concerning Mr. Adkinson.

Senator KASTEN. Mr. Steinberg, it is my understanding that August 9 is the date on which you confronted Mr. Adkinson with allegations, is that correct.

Mr. STEINBERG. That is correct.

Senator KASTEN. At that point, you made a number of allegations, is that correct?

Mr. STEINBERG. I didn't make allegations. I was repeating allegations that were transmitted to me by others.

Senator KASTEN. From whom were those allegations transmitted?

Mr. STEINBERG. Those allegations were transmitted by persons in confidence whose names we have agreed to keep confidential.

Senator KASTEN. In other words, you will not tell the committee where you heard of the contract?

Mr. STEINBERG. I believe that that is a decision that I would have to talk over with Senator Nunn. It may very well be that we would do so in executive session, but not publicly.

Senator KASTEN. One of the problems that we have got is that there were a number of allegations made, allegations including pumping up the testimony, that Mr. Adkinson attempted to get Bowdach to exaggerate and lie in his testimony before the subcommittee in order to make the subcommittee's as well as his work appear more important. I think it was also implied that the movie would sell for more or the book would sell more copies or whatever.

You are the one that is saying that that happened. Mr. Adkinson denies that. Is there any way that the committee can interview the individual or individuals on that particular point?

Mr. STEINBERG. First of all, let me make it clear that I am not saying it happened. I am saying that I was told that by individuals——

Senator KASTEN. You are saying it in memos to the record which we have read. That is the information we are getting. You are the only one that is saying that these allegations exist. It is troubling because if this is something that took place, it seems to me that you ought to be willing to at least tell us where you get this information.

Mr. STEINBERG. I believe the most appropriate place to get the information would be Mr. Bowdach who has made the allegations himself.

Senator KASTEN. Well, that is not the committee's understanding and it is also not the understanding of the Department of Justice. Is it from one individual or from a number of individuals that you learned that Mr. Adkinson entered into a contract to write the book?

Mr. STEINBERG. From a number of individuals.

Senator KASTEN. A number of individuals. And did a number of people come to you and say we have to have a meeting because we are concerned about this or did one person call you and you said I don't believe it or maybe it is true? Is this a rumor that was circulating around on your staff?

Mr. STEINBERG. No, it did not come from our staff.

Senator KASTEN. Did Mr. Adkinson resign, or was he terminated?

Mr. STEINBERG. He was permitted to resign.

Senator KASTEN. Mr. Adkinson resigned?

Mr. STEINBERG. That is correct.

Senator KASTEN. And he resigned on what date?

Mr. STEINBERG. The 13th, I believe.

Senator KASTEN. He resigned August 13, 1979. Did Mr. Adkinson ask you for a full Justice Department investigation of this matter?

Mr. STEINBERG. Yes, on August 10, he did.

Senator KASTEN. On August 10 he did?

Mr. STEINBERG. Yes.

Senator KASTEN. So 3 days before he resigned, he requested a full Justice Department investigation of this matter?

Mr. STEINBERG. On August 10, that is correct.

Senator KASTEN. At that point, he wanted a full Justice Department investigation of all of the allegations. Is that right?

Mr. STEINBERG. Let me check his memo, Senator.

Yes; that is correct.

Senator KASTEN. And on May 8, 1981, the Department of Justice declined prosecution due to insufficient evidence. Is that correct?

Mr. STEINBERG. We have never been notified of what they have done.

Senator KASTEN. OK. Well, the date that we have on that, May 1981, the Department of Justice declined prosecution due to insufficient evidence.

Senator Cannon?

Senator Cannon. Let's get this absolutely correct. You suspended Mr. Adkinson on August 9, is that correct?

Mr. STEINBERG. That is correct.

Senator CANNON. That is the time you told him that you would probably recommend to Senator Nunn that the matter be referred to the Department of Justice?

Mr. STEINBERG. That is correct.

Senator CANNON. Then it was the following day that he requested that you refer the matter to the Department of Justice, after he had been suspended and after he had notified him?

Mr. STEINBERG. That is correct.

Senator CANNON. Please outline the actions taken by Mr. Adkinson on behalf of Bowdach, that is, memos, telephone calls, letters, to aid in obtaining his release?

Mr. STEINBERG. It is my understanding although I was not at the subcommittee the full time, that until Mr. Adkinson was suspended on August 9, he was primarily responsible for handling matters dealing with Mr. Bowdach. Mr. Bowdach was an incarcerated witness when it first became clear that he was willing to testify and cooperate. I believe that happened in the fall of 1977, according to the records of the subcommittee.

Thereafter, there are letters to a number of people, including the marshal's services, the attorney general and others written on behalf of Mr. Bowdach for various things, changing his location, putting him in the witness relocation program.

Senator CANNON. Could you give us the dates of those?

Mr. STEINBERG. April 5, April 21 of 1978. The contact point on the subcommittee appears to be Mr. Adkinson. The letters are signed by the chairman, Senator Nunn. On May 9, Mr. Bowdach wrote the subcommittee stating that he and Mr. Adkinson had numerous talks and he reduced to writing certain considerations for his appearance, including requests for certain activity by the Government with respect to his relocation and reidentification, appropriate letters to the judge in whose court he was sentenced, the Parole Board, and other officials in any case where he needed it. There was a request for a job after he finished testifying and certain requests with respect to his immediate family.

There are memos in the file dated June 19, 1978, from Mr. Adkinson concerning conversations with Mr. Bowdach in San Diego dealing with various requests Mr. Bowdach had made with respect to his family, the marshal service, his jail sentence, and subsistance payments for his family.

June 28, there are letters to the Bureau of Prisons concerning Mr. Bowdach's place of incarceration. Mr. Adkinson is listed as the contact point.

July 5, memo from Mr. Adkinson concerning a request to the Bureau of Prisons with respect to Mr. Bowdach and the institution in which he is housed and whether he should be in a minimum or maximum security institution.

Memo July 7, 1978, from Mr. Adkinson to the file concerning Mr. Bowdach's request for immunity for his testimony.

A letter dated July 4, 1978, to the sentencing judge indicating Mr. Bowdach's cooperation with the subcommittee.

Senator CANNON.Was that prepared by Mr. Adkinson?

Mr. STEINBERG. It's a letter signed by Senator Nunn. It has no indication of who prepared it.

Senator CANNON. But Mr. Adkinson was the contact person with respect to the Bowdach case?

Mr. STEINBERG. As far as I know. Mr. Duffy was there at the time; I wasn't. He may be able to tell us more.

Mr. DUFFY. Most of these matters were handled exclusively by Mr. Adkinson at that time, Senator.

Mr. STEINBERG. August 14, 1978, letter from Mr. Adkinson to the marshal service concerning a threat to Mr. Bowdach's life.

August 15, 1978, letter from Mr. Adkinson to the Bureau of Prisons concerning a matter dealing with Mr. Bowdach's handling by the Bureau of Prisons.

Senator KASTEN. Would the Senator yield?

Senator CANNON. Sure.

Senator KASTEN. In this series of letters, these are letters signed by Senator Nunn as chairman of the committee, is that right?

Mr. STEINBERG. There are letters like that.

Senator KASTEN. The series of letters that you are referring to, these letters signed by Senator Nunn as chairman of the Special Committee on Investigations?

Mr. STEINBERG. There are a few of those, but most of this file, as I read it, are memos of recommendation from Mr. Adkinson.

Senator KASTEN. From Mr. Adkinson to the file, some of which resulted in letters or phone calls or other contact?

Mr. STEINBERG. That is correct.

Senator KASTEN. Is it your understanding, or Mr. Duffy's that any of these activities are inconsistent with the position that Senator Nunn and the Senators had taken previous to and during Mr. Bowdach's testimony and work for the committee?

In other words, earlier today, it was pointed out, and I know from personal conversations with Senator Nunn and others, that arrangements were made in the beginning of the proceedings with Mr. Bowdach saying that we would like to work with you and help you to try to restore some confidence, et cetera. Is there anything in this list of dates and letters that you are reading off here that is outside or inconsistent with the statements made by Senator Nunn and the Senators on the committee, that they were anxious to work with Bowdach and help him if he got into a jam?

Mr. DUFFY. The problem was that, Senator, is that neither one of us were parties to those initial arrangements or sat in on those initial arrangements with Mr. Bowdach and the Senators that Mr. Adkinson referred to.

Senator KASTEN. You don't know that it is not true?

Mr. DUFFY. No; I don't.

Senator KASTEN. Fine. Thank you, Senator.

Senator CANNON. All right; you may proceed.

Mr. STEINBERG. August 15, 1978, memo which basically recounts Mr. Bowdach's cooperation and certain problems Mr. Bowdach is experiencing and then a recommendation that the subcommittee encourage the executive and judicial branches to review the matter surrounding Mr. Bowdach's incarceration and to encourage reasonable and expeditious handling of matters now before other governmental branches in Mr. Bowdach's regard.

August 15, 1978, letter to judge who handled Mr. Bowdach's case in Florida, basically setting out Mr. Bowdach's cooperation and so forth. Also August 15, 1978, letter to the Chairman of the Parole Commission setting out Mr. Bowdach's cooperation. The contact point is listed as Mr. Adkinson.

Senator CANNON. You also have in August a memo from the Justice Department, from Justice Judy Bartnoff, deputy assistant attorney general, concerning the *Addonizio* case, saying that that will return Bowdach to prison?

Mr. STEINBERG. The case is not mentioned by name. However, there is an August 16, 1978, memo to the file from Mr. Adkinson concerning his conversation with Ms. Bartnoff concerning the possibility of Mr. Bowdach going back to prison.

There are other memos that have the date of August 15, and a number of them concern Mr. Bowdach's fear of going back to prison. All of those memos are from Mr. Adkinson.

A memo to file, August 16, 1978, from Mr. Adkinson to the U.S. attorney in Atlanta requesting his support for a favorable consideration before the Parole Commission, with respect to Mr. Bowdach.

There is a memo on August 16 concerning Ms. Bartnoff visiting Mr. Adkinson, that Mr. Bowdach may, in fact, have to go back to prison.

There is a letter on August 16, 1978, from the chairman, Senator Nunn, to the Attorney General concerning Mr. Bowdach's cooperation and his situation with respect to the Parole Commission.

There is a March 7, 1979, letter to the Attorney General from Senator Nunn with Mr. Adkinson listed as the contact point, which again restates Mr. Bowdach's cooperation and points out Mr. Bowdach's unique concern, based on the case of *U.S.* v. *Addonizio* that he might have to go back to jail at some imminently future date.

Senator CANNON. Who did that memo?

Mr. STEINBERG. The contact point listed on the end of the letter is Keith Adkinson. The letter is signed by the chairman, Senator Nunn.

The memo June 4 from Mr. Adkinson to the file concerns talks with the Justice Department about the effect of the *Addonizio* decision on Bowdach's remaining free, at large.

I might explain, if I may, what happened to Mr. Bowdach in a very simple manner and that is a judge in Miami was considering a motion to reduce Mr. Bowdach's sentence to time served. The judge had received recommendations from this subcommittee, as well as from the Justice Department, based on Mr. Bowdach's cooperation and the judge did, in fact, rule in Mr. Bowdach's favor, in effect, releasing him from jail.

The problem that happened at that point was the U.S. Supreme Court was considering a case called *U.S.* v. *Addonizio.* The legal point in that case was that a judge after a certain point in time shall have no more authority to reduce a prisoner's sentence. If that case was decided in the Government's favor, the judge's order releasing Mr. Bowdach would be null and void and he would have to go back to jail.

That's the situation that caused us to deal with the parole board, because if he went back to jail as a prisoner, the theory was, if the parole board held a hearing prior to his actually being recommitted to jail, he would, in effect, be released without ever having to go back to jail.

Senator CANNON. Was Mr. Adkinson familiar with that impact of the—potential impact of the *Addonizio* case?

Mr. STEINBERG. I think you would have to ask Mr. Adkinson. It appears, from the files, that he had knowledge.

Senator CANNON. He said he didn't recall. He was the operating person there. The letter to the Justice Department would have come to his attention, would it not?

Mr. STEINBERG. He is listed as the contact point in that letter discussing the problem; that's correct.

The next matters in the file relate to my taking over the Bowdach matter subsequent to Mr. Adkinson's resignation from the subcommittee, and the efforts by the subcommittee.

Senator CANNON. So all of those things that you have described so far, concerned after Mr. Bowdach was first contacted by the committee and prior to the time that you confronted Mr. Adkinson concerning the contract that had been entered into in December?

Mr. STEINBERG. That is correct, Senator.

Senator **Cannon**. And that contract had never been called specifically to your attention by Mr. Adkinson, or anyone else, other than the rumors that had been given to you or the stories that had been given to you by other persons?

Mr. **Steinberg**. That is correct.

Senator **Kasten**. I didn't understand. Would the Senator yield?

Senator **Cannon**. Yes; sure.

Senator **Kasten**. That had not been called to your attention prior to the rumors?

Mr. **Steinberg**. Prior to August 9, Mr. Chairman.

Senator **Cannon**. In other words, all the things he's testified to were prior to August 9. Before he knew about this.

Senator **Kasten**. Would the Senator yield for one more question?

Senator **Cannon**. Sure.

Senator **Kasten**. Mr. Steinberg, it is my understanding that the intention of Mr. Adkinson to write the book and the chapter or pages which were drafted, et cetera, and their decision to publish the book or not go forward with it were all made in January or February.

You stated in an answer to a question earlier that on August 9 when you confronted Mr. Adkinson with these allegations, that it was your understanding that it was Mr. Adkinson's intention to complete the contract and to write the book.

Is that what you said? Is that what you mean to say?

Mr. **Steinberg**. Yes; Mr. Duffy and I were interviewing Mr. Adkinson. I asked Mr. Adkinson what his present intention was with respect to completing this transaction with Mr. Bowdach.

Mr. Adkinson stated it was then his present intention to complete this transaction on August 9.

Senator **Kasten**. On August 9 he told you and Mr. Duffy that it was his intention to complete the book?

Mr. **Steinberg**. That is correct. I made contemporaneous notes and memos of our conversations.

Senator **Kasten**. It was clear in testimony this morning that Mr. Adkinson stated that he had decided not to complete the book in January-February. That's a point of difference.

Mr. **Duffy**. I might add, Senator, I recall in our meeting of August 13 that Mr. Adkinson did not remember—I better not. Strike that. I'm not sure of that point. I want to check a record here first.

Senator **Kasten**. While you are looking, I just want to make an announcement.

Mr. **Duffy**. I'm really positive that there was nothing said in the earlier meeting on the 9th about avoiding a contract. I think that came up for the first time in our second meeting.

Is that correct, Mr. Steinberg?

Mr. **Steinberg**. I believe so.

Mr. **Duffy**. And I also think Mr. Adkinson also did add that he contacted Mr. Bowdach between our first meeting and the second meeting. I think I asked him that question and I think that was his response.

Is that correct, Mr. Steinberg?

Mr. **Steinberg**. Correct.

Senator Kasten. It is the intention of the Chair to allow Senator Cannon to proceed with whatever additional questions he may have with Mr. Steinberg.

It is also my understanding and if I could have the attention of the Senator from Nebraska, it is also my understanding that the Senator from Nebraska has questions, but his questions would not be to Mr. Steinberg, they would be to Mr. Adkinson.

Senator Exon. The chairman is correct.

Senator Kasten. The intention of the Chair would be to complete questions. I have no further questions for Mr. Steinberg. We will allow the Senator from Nevada to complete his questions and discussion with Mr. Steinberg. The Senator from Nevada has a scheduling problem, as well.

We will then switch to the Senator from Nebraska for questions of Mr. Adkinson. Then if there are additional questions, possibly Senator Cannon, you can work around that 1 o'clock meeting that you have got.

It is still my hope and my intention that we can ask Mr. Adkinson questions in person today, if possible. I'm willing to work with brief periods of recess so that we don't have to assemble this whole group again.

I'm frankly worried that tomorrow and Saturday we will be on a continuing resolution and no one knows what's going to be happening Monday, Tuesday, and Wednesday.

I would like to conclude the questioning if we are at all able to do so.

Senator Cannon?

Senator Cannon. I think I finished my questions for these gentlemen. I wanted to just comment to the chairman that the committee may want to request the Governmental Affairs Committee to provide us with copies of these documents. But a number of those are confidential files. They would have to be treated so by this Committee if they were furnished.

Senator Kasten. It is my understanding, Senator, that the Governmental Affairs Committee file has been provided to individual members of the Committee.

Now it may or may not include all these documents.

Senator Cannon. That's not to all members of the Committee.

Senator Kasten. Well, that Governmental Affairs file ought to be available to any member of the Committee who seeks it out.

It is also my understanding that some additional information from the Justice Department, which is particularly sensitive, has been made available and will be made available to us despite the fact that the Justice Department on May 8 declined prosecution due to insufficient evidence.

So we might have some problems in all getting at the same files, but I think we will be able to work with those requests of the Senator. Both Senator Packwood and I felt strongly that these documents and this information ought to be made available to members of the committee, even though some of it is of a confidential and sensitive nature.

But I can assure you that we will work with you in finding any information that you feel is necessary.

Senator Cannon. Mr. Chairman, may I also state that I would like to request that when we recessed today, that the hearing will be held open for an indefinite period at this point, because I have requested the Justice Department to have the opportunity for the committee to interview Mr. Bowdach, and also the staff needs some additional time to investigate or explore some other information that has been brought to our attention just this week.

I don't know how long it will take the Department of Justice to respond to us on the Bowdach request. But I have no desire to delay the matter. We want to move just as rapidly as we can.

Senator Kasten. I agree with the Senator. I think all of us are going to work together to try to achieve these goals. I don't know whether it is going to be possible or whether it would be practical for Mr. Bowdach to appear here or in a hearing with us.

That's a determination that's going to be made, I assume, by the Justice Department in consultation with Senators. But there is no desire by this Senator or by the committee to in any way preclude your opportunity to ask additional questions or to seek out the information that you seek.

Senator Cannon. I do have just one final question for Mr. Steinberg.

Did you advise the Department of Justice officials involved in Mr. Bowdach's parole of this matter concerning Mr. Adkinson?

Mr. Steinberg. Yes, we did. I conferred with Senator Nunn and we felt that it was only appropriate that officials in the Justice Department who were involved with Mr. Bowdach's parole and sentence be advised that we had received information concerning this potential conflict-of interest for whatever action they deemed appropriate, since they were handling Mr. Bowdach's parole matter at that time.

I personally advised Mr. Chuck Ruff and Ms. Judy Bartnoff, who were handling the matter at that time.

Senator Kasten. Mr. Steinberg, I have no further questions. But if it is possible for you, I would very much appreciate it if you could remain here or at least be somewhere where we can find you in the interest of trying to complete any questions that Senators want to go through today in person.

If you can't be here in the audience, could you be somewhere where we could call you or find you, in case a Senator should arrive who wanted to ask you questions or if Senator Cannon has additional questions.

Mr. Steinberg. We would be happy to cooperate.

Senator Kasten. Thank you, and I thank you very much for your testimony today.

I would like then to recall Mr. Keith Adkinson.

Senator Kasten. We have been operating under the 5-minute rule. We will give you an opportunity to ask whatever questions you have. We will keep extending your 5-minutes. We will keep time in case three or four other Senators drop in. Then we will go back into the sequence of allowing Senators to ask questions in roughly 5 minute segments and give Mr. Adkinson a chance to respond.

Senator Exon.

Senator **Exon**. I would like to go into a little bit how you were recruited for the position as FTC Commissioner. I believe it has been gone into to some extent previously. So, please bear with me if some of it is repetitious.

Would you just state for the record and then I may have some specific questions, how did it come that you were selected and by whom to be FTC Commissioner?

Mr. **Adkinson**. Thank you, Senator. I was contacted by the Office of Presidential Personnel. It would be hard for me to fix a date, but I would guess it was in June, perhaps May, and asked if I had any interest in the position of Federal Trade Commissioner. I reflected on that in great detail and indicated that I did in fact have interest in that position.

Senator **Exon**. What was the individual's name who called you?

Mr. **Adkinson**. I could provide it. I cannot recall, Senator, who actually called me from Mr. James' office.

Senator **Exon**. Now, prior to that call, had you had discussions with anyone inside or outside the White House regarding our possible interest in some Federal appointment?

Mr. **Adkinson**. My name had been submitted by a number of people with whom I had worked for consideration for a position in the administration.

Senator **Exon**. Going back to what was the earliest time that you remember your name was considered as serving with the administration in some capacity.

Mr. **Adkinson**. I was very flattered when very shortly after the election, the chairman of the National Democrats for Reagan, Leon Jaworski, submitted my name for consideration for a Department of Justice position.

Senator **Exon**. Was Mr. Jaworski your superior in the organization that I believe was known as Democrats for Reagan-Bush?

Mr. **Adkinson**. Yes, sir, superior in the context he was the national chairman.

Senator **Exon**. What was your title?

Mr. **Adkinson**. I was the director, which means nothing more than simply being the individual who is in-house on a daily basis, putting together various committees nationwide and trying to solicit the interest of prominent Democrats in joining the effort.

Senator **Exon**. I am curious as to how you became involved in the effort for Reagan-Bush. Did you volunteer or did someone solicit you to join a similar organization? I am not indicating anything is wrong with that. I am just trying to get a little history.

Mr. **Adkinson**. I was approached as was a partner in my firm, in the early summer by individuals who were working for Mr. Reagan to explore interest in working in the campaign, particularly in the Democrats for Reagan. It was not until after the two conventions that the previous discussions which were not numerous but they were not infrequent—there were several discussions on it—before they took fruition to the extent that I prepared a proposal to the compaign with regard to how I would suggest we might implement such a program. While you were not here earlier, I did mention that it was not until after Labor Day that I actually went over to the campaign on a full-time basis.

That is when the entity officially came to life.

Senator Exon. Were you active in the primary campaign?

Mr. Adkinson. No, sir.

Senator Exon. Either as a Democrat or Republican for any candidate?

Mr. Adkinson. No, sir.

Senator Exon. You were not. Did you vote in the Democratic primary?

Mr. Adkinson. Yes, sir.

Senator Exon. Let me go into this a little bit further then. You said that you had this call sometime, May or June—I don't think the time is critically important. You don't remember the name of the individual that called and asked you what, what did that individual ask you?

Mr. Adkinson. It was a discussion over lunch with regard to interest in the campaign

Senator Exon. When was it that somebody in the White House first contacted you after I assume that Mr. Jaworski made a recommendation that you might be a good public servant in the administration?

Senator Kasten. Without objection, the Senator will be granted an additional 5 minutes.

Mr. Adkinson. I misunderstood your question. I thought you were talking about the genesis of Democrats for Reagan. I can probably provide the committee with the exact date. I noted on my calendar when I went down there to discuss it.

Senator Exon. Would you provide that later?

Mr. Adkinson. I would be happy to. But my recollection is it was May or June.

Senator Exon. The thrust of that conversation was what? That they might be interested in you for some position?

Mr. Adkinson. For the Federal Trade Commission.

Senator Exon. Right now, you don't remember who that was?

Mr. Adkinson. I cannot recall, Senator, at this moment.

Senator Exon. When did the subsequent conversations take place with the White House? The next day or the next week or the next month and with whom? I am trying to get to the point where—who was the first person that you can recall at this time by name who contacted you specifically about this FTC Commissioner's position?

Mr. Adkinson. The first person is the individual that I seem to have an inability to recall right now. There were followup calls from Mr. Fielding's office indicating that I was seriously being considered for the position and requesting that I fill out various materials. At some point shortly into that timeframe at the end of June, I believe, the President announced his intention to nominate me to the Federal Trade Commission.

Senator Exon. You discussed this with the President?

Mr. Adkinson. No, Senator, I have not.

Senator Exon. Have you discussed it with the Vi[illegible]resident?

Mr. Adkinson. No, sir, I have not.

Senator Exon. Then give me the names of those individuals that you can recall at this time inside the White House or outsid[illegible]the White House with whom you have discussed this position.

Mr. **Adkinson**. Jim Baker within the White House, Pendleton James within the White House, various of his assistants within the White House.

Senator **Exon**. Now, let's go to the Bowdach matter for just a few questions, Mr. Chairman. I will try and wind this up.

I have seen some of the background information on this. The contract that you had with Mr. Bowdach has been alluded to here during the questioning, I am sure. Prior to the time that you entered into the contract with Mr. Bowdach, did you have—what prior discussions did you have with him and how often with regard to the contract that was later consummated?

Mr. **Adkinson**. The discussions commenced within days before the consummation in the context of signing the joint authorship agreement. So, it would have been in the third week in December 1978.

Senator **Exon**. And you held—how many times were you together to talk about this?

Mr. **Adkinson**. I really couldn't recall, Senator. As I mentioned earlier, he had been relocated in the geographic area in the witness protection program, near me and the investigator who was then living up there. There was frequent contact during the early portion of him being up there. So I could not answer with specificity how many times we talked or how many occasions there might have been.

Senator **Exon**. Do you remember where you held these meetings, in a home, in a car, in your office?

Mr. **Adkinson**. Well, we had discussions in my home and probably in a car as well.

Senator **Exon**. In your office here?

Mr. **Adkinson**. No, he was not coming into Washington.

Senator **Exon**. You can't say whether you discussed this more than twice or less than 15 times?

Mr. **Adkinson**. Well, I can't the way you are asking the question. It suggests——

Senator **Exon**. I am not a lawyer so I am not trying to entrap you. [Laughter.]

All I want is for you to tell the committee something about the timeframe and the number of incidents that you had with regard to joining him in the writing of a book for profit.

Mr. **Adkinson**. OK. Let me perhaps try to put this in perspective. Mr. Bowdach was released from prison.

Senator **Kasten**. The Senator will be allotted an additional 5 minutes.

Mr. **Adkinson**. And he immediately came to my hometown, Harpers Ferry, W. Va. There were people that wanted to discourage him from that because of the conspicuous nature of him as an individual. But nevertheless, shortly after his release, the marshals relocated him in that area. At that time, he came to see both Bill Gallinaro who was the investigator handling most of the investigative end of these hearings, and myself. He was accompanied by a lady, I think one of his former wives that joined him in that relocation.

Senator **Exon**. You mentioned a name, Bill Gallinaro.

Mr. **Adkinson**. Gallinaro.

Senator Exon. Was Mr. Gallinaro present on any of the occasions when you and Mr. Bowdach discussed the possibility of writing this book on which the contract was subsequently entered into?

Mr. Adkinson. Not that I recall.

Senator Exon. No further questions, Mr. Chairman. Thank you.

Senator Kasten. I thank you, Sentor. What I would like to do now, is to recess the committee hearing temporarily and get in touch with Senator Cannon to see if he has additional questions which he would be prepared to ask in person. So, I would like to ask Mr. Adkinson and also Mr. Steinberg to just remain here while we contact Senator Cannon.

Senator Cannon has informed the committee that he has no further questions which he would like to ask either witness. With that information and no other——

Mr. Adkinson. Senator?

Senator Kasten. Did you, Mr. Adkinson, have any concluding statement which you would like to make?

Mr. Adkinson. Yes, I would like to make an observation or two with regard to earlier testimony. The litany of documents that Mr. Steinberg discussed and the dates involved some of which I jotted down because I didn't have the benefit of looking at them, are, for the record, entirely consistent with my recollection of the events.

Now, there may be other documents but just from what he went through, there were an inordinate number of documents prior to, surrounding, and after Mr. Bowdach's appearance as a witness in the public hearings. I was a firm believer in the development of memorandums, particularly when you are dealing with such a sensitive witness. And I was a great believer in taking very close counsel with Senator Nunn with regard to what the committee could or could not do on behalf of a witness before his appearance.

The purpose of that is to protect the interest of the subcommittee and its credibility, because a subcommittee's ability to attract witnesses is absolutely contingent upon its ability to say what it can and cannot do and then live and abide by that. The only two dates that I noticed that he mentioned with regard to any memorialization of activities by me, were in March and June of 1979.

Now, I don't know the content of those documents, but I can assure you that they were consistent with the implementation of the warranties and representations. You know Senator Nunn perhaps better than I do. He's a very cautious and careful person, particularly when it comes to making warranties and communications and representations on behalf of a particular witness.

The other two points that I would like to address, if I may, for the purpose of the record, is whether or not I requested the referral to the Department of Justice. I am at a disadvantage, because I did not have a witness present in that encounter session on August 9. It was one of the more intensely vicious experiences of my life. It was confrontational to the extreme.

I have absolutely no recollection of them mentioning at the time the need or the desirability of referring it to the Department of Justice. I distinctly do recall leaving that meeting, beating as hasty a retreat as I could, because of the exacerbated situation, and taking counsel and developing the documents which I prepared to show, which I am prepared to show you if you so desire, and demanding the full and complete investigation.

I think it is relevant for the record, to note that my draft letter of resignation included the demand for a full FBI investigation. Mr. Steinberg requested that I delete that paragraph in the letter and I inquired as to why. At that time, he told me he wasn't sure that there was anything worthy of referral. I deleted the paragraph.

When the matter was then referred to the Department of Justice, I was incensed and prepared the document to Senator Nunn which was waiting for him upon his arrival from his out of the city trip. In that letter, I made the request for a personal meeting for the purpose of addressing the nature of the activities that had occurred and for the purpose of determining what his role had been and, specifically, for the purpose of getting certain assurances, Senator. There were two assurances that I wanted from that meeting.

Senator **Kasten**. This is in your personal meeting with Senator Nunn?

Mr. **Adkinson**. Personal meeting with Senator Nunn, where he had one of his staff present other than Mr. Steinberg. I requested that Mr. Steinberg not be present, because of the nature of the relationship at that point. I had the meeting with Senator Nunn and he brought in Mr. Steinberg to address the two issues that were of concern to me.

One, whether, in fact, all of the allegations had been been referred to the Department of Justice. Mr. Steinberg answered in the affirmative.

Two, whether the Department of Justice had been notified that I had requested the inquiry. It was answered in the affirmative. That is my recollection of the events.

The other point that I feel compelled to address is the apparent contentious and clear recollection with regard to whether or not I said that I intended to complete the project. I don't recall, because of the heated nature of that exacerbated situation, what I may or may not have said. I know that the allegations, particularly with regard to witness tampering, was one that I felt extraordinarily keenly about because of the circumstances of which you may be aware. My recollection is that the next day, Mr. Steinberg, asked me a question in the context of a verb, are you writing a book, to which he alleged the next day I responded in the affirmative. But it simply was not the case.

There are other individuals with whom this committee can seek testimony, that I think will confirm the fact that the project did not move forward beyond the timeframe that I have indicated.

That's the only remarks that I wish to make at this point.

Senator **Kasten**. Senator, do you have an additional question or two?

Senator **Exon**. Yes.

Senator **Kasten**. Senator Exon.

Senator **Exon**. What other position, other than FTC Commissioner, have you been considered for on the part of the White House?

Mr. **Adkinson**. There was some discussion, Senator, about the Commissioner of Customs, as I mentioned earlier, which is in the Department of Treasury.

Senator Exon. Any other position, or are these the only two that you know of that you were considered for?

Mr. Adkinson. They are the only two that I can recall. If they are aware of another, share it with me. There are lots of discussions among people that thought I would be a fine addition to the Department of Justice and the law enforcement area, because of my background and the Department of Treasury in the enforcement area.

Senator Exon. Did I hear you say that some people had suggested you would be in the Department of Justice?

Mr. Adkinson. Yes.

Senator Exon. Was a——

Mr. Adkinson. Nothing specific was addressed, to my recollection, Senator. No consideration for a particular slot.

Senator Exon. In addition to the FTC position that you have been nominated for, the only other position that you know of that you were at least considered for, was what?

Mr. Adkinson. Commissioner of Customs.

Senator Exon. Commissioner of what?

Mr. Adkinson. Customs, Senator.

Senator Exon. Was that offered to you?

Mr. Adkinson. No, sir. These were preliminary discussions with people I happened to know in the various departments who would very much have liked to see me as a part of their departments. The only substantive discussion that I can recall, had to do with the Federal Trade Commission with Mr. James.

Senator Exon. Do you have any knowledge of your being recommended to the Department of Justice and if they took any pro or con on such a suggestion?

Mr. Adkinson. I know, as I mentioned earlier, that Mr. Jaworski originally proffered my name to the Department of Justice for consideration for a position there. It never reached fruition. I thought it was very kind of him. I had not solicited him.

Senator Exon. And you don't know whether or not any action, pro or con, was taken by anyone in the Department of Justice as to the suggestion of Mr. Jaworski?

Mr. Adkinson. No, sir, Senator.

Senator Exon. Thank you, Mr. Chairman. I thank the witness.

Senator Kasten. Thank you, Senator. I would like to thank both Mr. Adkinson and Mr. Steinberg for appearing. I also believe that the idea and the effort of a full and complete hearing is helpful to this process. I think we have demonstrated that today.

I would also like to thank the Senators on the committee for their cooperation, for their work, as we have been able to conduct a very businesslike and deliberate hearing on an important nomination of this Administration.

The hearing is adjourned.

[Whereupon, at 1:40 p.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR PRESSLER AND THE ANSWERS THERETO

Question 1. Do you feel that the FTC has had difficulty in interpreting the authorizing legislation and that ambiguity has made it difficult for the FTC to understand its authorities?

Answer. Although much of the statutory language enforced and administered by the FTC is broad and vague, it appears in many cases to be deliberately so, in order to afford a generality and adaptability which could serve the Commission, the Congress, and the marketplace well. I have certainly heard the arguments that the flexibility afforded by the statutes and the sometimes ambiguous language has been difficult for the Commission to interpret. I am also aware of the charges that the Commisison has fallen prey to using this statutory flexibility as a way of making the means fit a desired end.

I have neither information nor experience with the Commision on which to base a judgment with respect to whether it has, in fact, had difficulty in interpreting its authorizing legislation or understanding it authority.

However, the perception that the Commission has, for whatever reasons, taken actions many have argues are outside the scope and intent of the underlying statutory authority has resulted in recent years in directions from the Congress with respect not only to what it intended the FTC to do, but what it intended the FTC should not do. The messages sent by the Congress during the past few years, it seems to me, have been absolutely clear and leave little room for misunderstanding.

If it is difficult for the Commision to use the flexibility of the statutory language so as to achieve the basic aims of the Congress, it is then incumbent upon the Commission to express this difficulty to the Congress. Legitimate questions of Congressional intent should be resolved by the Congress, not the Commission.

Question 2. How do you interpret the FTC's authority under the Magnuson-Moss Act in regard to mandatory inspections?

Answer. I presume the question is focused upon the so-called used car rule promulgated pursuant to the mandate of section 109(b) of "Magnuson-Moss Warranty-Federal Trade Commission Improvements Act." Since the matter is presently pending before the Congress with the possibility of being returned to the Commission for further action, it would seem inappropriate to comment. At the same time, I want to be as forthcoming as possible. If I have misinterpreted the thrust of your question or if you or your staff have general questions in this area, I would be happy to respond.

Question 3. The American Medical Association and other organizations have accused the FTC of very expensive "fishing expeditions" which are the result of the Commission subpena authority. How do you react to such a statement?

Answer. While it would be inappropriate to answer the question in the context of a particular case or subpena, certain general observations would seem in order.

There are "horror stories" concerning FTC subpenas which, if the facts are accurate, are cause for concern. I have heard, for example, of subpenas hundreds of pages in length; I have also heard of instances where the burden of compliance has been staggering.

Subpena power is a necessity, but it must not be abused. A subpena should be narrow in focus and specific in its demands. While I have no specific empirical evidence available to me, there seems to be validity to the concern that, in the past, the Commissioners have been less than vigilant in insuring a controlled use of the FTC's subpena authority.

I prepared scores and scores of subpenas while counsel to the Senate Permanent Subcommittee on Investigations and am particularly sensitive to the concerns raised by the question. The FTC Improvements Act of 1980 requirement that a Commissioner sign a subpena is an important improvement. Subpena review and approval is one of the earliest opportunities for a Commisioner and the Commission to evaluate the activities of staff. It therefore deserves the careful attention of the Commissioners themselves.